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Opinion No. GA-0959

Mr. Jody Anderson, President
Angelina & Neches River Authority
Post Office Box 387
Lufkin, Texas 75902

Re: Whether a local election under section 1502.055, Government Code, is required before a municipality may sell its sewage collection system and treatment plant to a river authority: Possible conflict with chapter 30, Water Code (RQ-1041-GA)

SUMMARY

Generally, a municipality must hold an election pursuant to subsection 1502.055(a) of the Government Code before selling a utility system.

However, by virtue of section 30.035 of the Water Code, no such election is required when a municipality sells a disposal system to a river authority under chapter 30 of the Water Code.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201204201
Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 8, 2012
PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeal of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [Square brackets and strikethrough] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 59. COLLECTIONS

1 TAC §59.2


The OAG published Notice of Intent to conduct a rule review of 1 TAC §§59.1 - 59.3 in the February 10, 2012, issue of the Texas Register (37 TexReg 719). The review assessed whether the reasons for adopting the rules continue to exist. Section 59.2 is now proposed for amendment because the OAG identified during the rule review that the official text of §59.2(b)(6)(B) as published by the Secretary of State omits substantive language that is required to administer and interpret the rule. Section 59.2(b)(6)(B) that appears in the Texas Administrative Code and on the Secretary of State's website omits the words "of this section indicate that a lawsuit on the account may be filed by the Attorney General, the demand letters shall so indicate," from the end of subsection (b)(6)(B). (See, http://info.sos.state.tx.us/pls/pubreadtac$ext.TacPage?si=R&app=9&dir=&p_loc=&p_tloc=&p_ploc=&p_g=1&p_tac=1&t=3&ch=59&f=2). Because Texas Government Code §2001.037 states the official text of an administrative rule is the text on file with the Secretary of State, a formal amendment to §59.2(b)(6)(B) is required in order to correct the omission.

Additionally, a correction to §59.2(b)(7) was also identified as requiring an update in order for the rule to accurately reflect current law, which requires the reporting of delinquent obligations owed to the state to the Attorney General for further collection by no later than the 90th day after the obligation becomes delinquent. This time period was shortened from 120 days to 90 days due to amendment to Texas Government Code §2107.003 enacted by Senate Bill 1615, 80th R.S. (2007).

A conforming amendment in §59.2(c)(1)(A) is also proposed relating to the repeal of the OAG's administrative rules in §59.3, relating to Reporting Delinquent Obligations Owed to the State. The repeal of §59.3 will be proposed in a separate notice that will be published contemporaneously in this issue of Texas Register.

Finally, in §59.2(c)(2)(B), (c)(2)(B)(ii), and (c)(3)(A)(ii) changes are made to correct the internal referencing of the rule.

Ronald Del Vento, Division Chief, Bankruptcy and Collections Division, has determined that for each year of the first five years following the amendment of §59.2, the public benefit that will result from the amendment of the rule is that any state agency official, employee, or member of the public can refer to the rule for complete and accurate information regarding the Uniform Guidelines and Referral of Delinquent Collections.

Mr. Del Vento has also determined that during the first five-year period following the amendment of §59.2, there will be no fiscal implications for state government or for local government as a result of the amendment. Further, he has determined that for each year of the first five years following the amendment of §59.2, there will be no economic cost to persons formerly required to comply with the provisions of the former rule. Finally, Mr. Del Vento has determined that the amendment of §59.2 will have no adverse effect on small business or local employment.

Written comments on this proposal may be submitted for 30 days following the publication of this notice to Ronald Del Vento, Division Chief, Bankruptcy and Collections Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 457-4936, ronald.delvento@texasattorneygeneral.gov.

The amendment is proposed in accordance with Texas Government Code §2107.002, which authorizes the OAG to adopt, by rule, uniform guidelines for the process by which a state agencies collect delinquent obligations.

No other code, article or statute is affected by this proposal.


(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Attorney general--The Office of the Attorney General of Texas, acting through the Bankruptcy and Collections Division of the agency.

(2) Debtor--Any person or entity liable or potentially liable for an obligation owed to the state or a state agency or against whom a claim or demand for payment has been made.

(3) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Make demand--To deliver or cause to be delivered by United States mail, first class, a writing setting forth the nature and amount of the obligation owed to the agency. A writing making demand is a "demand letter."

(5) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

PROPOSED RULES August 17, 2012 37 TexReg 6187
(6) Security—Any right to have property owned by an entity with an obligation to a state agency sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the State of Texas and/or the agency against another entity and/or that entity’s property, such as a bond, letter of credit, or other collateral that has been pledged to the agency to secure an obligation.

(7) State agency—Any agency, board, commission, institution, or other unit of state government.

(b) Uniform guidelines for state agencies in collecting delinquent obligations.

(1) A state agency shall adopt procedures to establish and determine the liability of each person responsible for the obligation, whether that liability can be established by statutory or common law. Agency records shall contain and reflect the identity of all persons liable on the obligation or any part thereof. All agency collection procedures shall apply to every debtor, subject to reasonable tolerances established by the agency. (See paragraph (8) of this subsection.)

(2) A state agency shall adopt procedures to ensure that agency records reflect the correct physical address of the debtor’s place of business, and, where applicable, the debtor’s residence. Where a fiduciary or trust relationship exists between the agency (or the state) as principal and the debtor as trustee, an accurate physical address shall be maintained. A post office box address should not be used. Agency records may reflect a post office box where it is impractical to obtain a physical address, or where the post office box address is in addition to a correct physical address maintained on the agency’s books and records.

(3) All demand letters shall be mailed in an envelope bearing the notation "address correction requested" in conformity with 39 Code of Federal Regulations, Chapter III, Subchapter A, Part 3001, Subpart C, Appendix A, §911. If an address correction is provided by the United States Postal Service, the demand letter should be re-sent to that address prior to the referral procedures described herein. Demand should be made upon every debtor prior to referral of the account to the attorney general. The final demand letter should include a statement, where practical, that the debt, if not paid, will be referred to the attorney general.

(4) Where state law allows an agency to record a lien securing the obligation, the agency shall file the lien in the appropriate records of the county where the debtor’s principal place of business, or, where appropriate, the debtor’s residence, is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. After referral of the delinquency to the attorney general, any lien securing the indebtedness may not be released, except on full payment of the obligation, without the approval of the attorney representing the agency in the matter.

(5) Where practicable, agencies shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his assets, and other information pertinent to collection of the delinquent account.

(6) Prior to referral of the obligation to the attorney general, the agency shall:

(A) verify the debtor’s address and telephone number;

(B) transmit no more than two demand letters to the debtor at the debtor’s verified address. The first demand letter should be sent no later than 30 days after the obligation becomes delinquent. The second demand letter should be sent no sooner than 30 days, but not more than 60 days, after the first demand letter. Where agency procedures, statutory mandates, or the requirements of this section indicate that a lawsuit on the account may be filed by the Attorney General, the demand letters shall so indicate;

(C) verify that the obligation is not legally uncollectible or uncollectible as a practical matter. Agencies shall adopt procedures to ensure that referred obligations are not uncollectible. By way of example, the following illustrations apply.

(i) Bankruptcy. Agencies should prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances adopted by the agency. Copies of all such proofs of claims filed should be sent to the attorney general absent the granting of a variance. Agencies shall maintain records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable the agency to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. Agencies may seek the assistance of the attorney general in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.

(ii) Limitations. If the obligation is subject to an applicable limitations provision that would prevent suit as a matter of law, the obligation should not be referred unless circumstances indicate that limitations has been tolled or is otherwise inapplicable.

(iii) Corporations. If a corporation has been dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked, the obligation should be referred unless circumstances indicate that the account is clearly uncollectible.

(iv) Out-of-state debtors. If the debtor is an individual and is located out-of-state, or outside the United States, the matter should not be referred unless a determination is made that the domiciliation of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of agency funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(v) Deceased debtors. If the debtor is deceased, agencies should file a claim in each probate proceeding administering the decedent’s estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation should be classified as uncollectible and not be referred. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations should include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

(7) Not later than the 90th [120th] day after the date an obligation becomes delinquent, the agency shall report the uncollected and delinquent obligation to the attorney general for further collection efforts as hereinafter provided. See §2107.003 [§2107.004], Texas Government Code.

(8) Agencies shall adopt reasonable tolerances, subject to review by the attorney general, below which an obligation shall not be referred. Factors to be considered in establishing tolerances include the size of the debt; the existence of any security; the likelihood of collection through passive means such as the filing of a lien where applicable; expense to the agency and to the attorney general in attempting to collect the obligation; and the availability of resources both within the agency and within the Office of the Attorney General to devote to the collection of the obligation.
(9) An agency should utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by the Texas Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid. Please see Accounting Policy Statement 28, "Reporting of Debts and Certain Tax Delinquencies to the State," issued April 16, 1999 and reissued October 6, 2000 available on the Comptroller of Public Accounts' website at www.cpa.state.tx.us.

(c) Referral to attorneys.

(1) Suit on the obligation by in-house attorneys.

(A) Agencies seeking to use in-house attorneys to collect delinquent obligations through court proceedings must submit a written request to the attorney general’s Bankruptcy and Collections Division. Upon written approval, a state agency may file suit to collect a delinquent obligation through an attorney serving as a full-time employee of the agency. Where circumstances make it impractical to secure attorney general approval for every delinquent obligation upon which a lawsuit is to be filed, a state agency may apply to the attorney general for an authorization to bring suit on particular types of obligations through attorneys employed full-time by the agency. Such authorization, if given, must be renewed at the beginning of each fiscal year.

[State agency shall comply with reporting requirements adopted by the attorney general in 1 TAC §59.3.]

(B) After an obligation is referred to agency attorneys employed in-house counsel, the obligation shall be reduced to judgment against all entities legally responsible for the obligation where the lawsuit and judgment will make collection of the obligation more likely and the expenditure of agency resources in recovering judgment on the obligation is justified.

(C) Where authorized by law, the agency shall plead for and recover attorney’s fees, investigative costs, and court costs in addition to the obligation.

(D) Every judgment taken on a delinquent obligation should be abstracted and recorded by the agency in every county where the debtor: owns real property; operates an active business; is likely to inherit real property; owns any mineral interest; or has maintained a residence for more than one year.

(2) Referral to the attorney general.

(A) Agencies are encouraged to explore the exchange of accounts with the Attorney General by computer tape or other electronic data transfer and to discuss any variances as may be appropriate. The agency and the Attorney General may agree upon an exchange of certain minimum account information necessary for collection efforts by the Attorney General.

(B) Agencies may refer individual accounts to the attorney general after the procedures set forth in subsection (b)(6) - (8) [(a)(6) - (8)] of this section. Individual accounts referred to the attorney general should include by the following:

(i) copies of all correspondence between the agency and the debtor;

(ii) a log sheet (see subsection (b)(5) [(a)(5)] of this section) documenting all attempted contacts with the debtor and the result of such attempts;

(iii) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;

(iv) any information pertaining to the debtor’s residence and his assets; and

(v) copies of any permit application, security, final orders, contracts, grants, or instrument giving rise to the obligation.

(C) Delinquent accounts upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws shall be referred immediately, since collection of the security may obviate the need to file a claim or to appear in the bankruptcy case.

(D) The attorney general may decide that a particular obligation or class of obligations may be assigned after referral to the appropriate division within the Office of the Attorney General.

(3) Referral to collection firms or private attorneys.

(A) Prior approval of attorney general. Except as provided by §2107.003, Texas Government Code, no agency may contract with, retain, or employ any person other than a full-time employee of the agency to collect a delinquent obligation without prior written approval of the attorney general. Any existing arrangements must receive the written approval of the attorney general to be renewed or extended in any fashion.

(i) Approval of contract with private firm or attorney. Prior to contracting with, retaining, or employing a person other than a full-time employee of the agency to collect a delinquent obligation, an agency must submit a proposal to the attorney general requesting the attorney general to collect the obligation(s). Any agency contracting with any person other than a full-time employee of the agency for the collection of a delinquent obligation must submit the proposed contract to the attorney general for written approval. The proposal must disclose any fee that the agency proposes to pay the private collection firm or attorney. The attorney general may elect to undertake representation of the agency on the same or similar terms as contained in the proposed contract. If the attorney general declines or is unable to perform the services requested, the attorney general may approve the contract. If the attorney general decides that the agency has not complied with this subsection, the attorney general may:

(I) decline to approve the contract; or

(II) require the agency to submit or resubmit a proposal to the attorney general for collection of the obligation in accordance with this subsection.

(ii) If the attorney general fails to act as set forth in clause (i) of this subparagraph [subsection (a) of this section] within 60 days of receipt of the proposed contract or receipt of additional information requested, the attorney general is deemed to have approved the contract in accordance with this rule.

(B) Requirements of proposed contracts with private persons presented for attorney general approval. In addition to information required by other state laws, all contracts for collection of delinquent obligations must contain or be supported by a proposal containing the following:

(i) a description of the obligations to be collected sufficient to enable the attorney general to determine what measures are necessary to attempt to collect the obligation(s);

(ii) explicit terms of the basis of any fee or payment for the collection of the obligation(s);

(iii) a description of the individual accounts to be collected in the following respects:

(I) the total number of delinquent accounts;

(II) the dollar range;
(III) the total dollar amount;
(IV) a summary of the collection efforts previously made by the agency; and
(V) the legal basis of the delinquent obligations to be collected.

(C) Suggested requirements of proposed contracts with private persons presented for attorney general approval. All contracts for collection of delinquent obligations should contain provisions stating the following:

(i) that litigation on the delinquent account is prohibited unless the private person obtains specific written authorization from the agency and the attorney general and complies with the requirements of this rule;

(ii) that the person is required to place any funds collected in an interest bearing account with amounts collected, plus interest, less collections costs, payable to the agency on a monthly basis or by direct deposit to the agency’s account on a weekly basis with the agency billing once a month; in either case a listing of the accounts and amounts collected per account should be submitted to the agency upon deposit of the funds;

(iii) that the person refer any bankruptcy notice to the agency within three working days of receipt;

(iv) that the agency may recall any account without charge;

(v) that the person may not settle or compromise the account for less than the full amount owed (including collection costs where authorized by statute or terms of the obligation) without written authority from the agency;

(vi) that the person is not an agent of the agency but is an independent contractor; and providing further that the person will indemnify the agency for any loss incurred by his violation of state and federal debt collection statutes or by the negligence of the person, his employees or agents;

(vii) that any dispute arising under the contract be submitted to a court of competent jurisdiction in Texas, unless any other venue is statutorily mandated, in which case the specific venue statute will apply, subject to any alternative dispute resolution procedures adopted by the agency pursuant to Chapter 2009, Texas Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

TRD-201204087
Katherine Cary
General Counsel
Office of the Attorney General
Earliest possible date of adoption: September 16, 2012
For further information regarding this publication, please contact Diane Morris, Agency Liaison, at (512) 936-1180.

1 TAC §59.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the Office of the Attorney General or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Office of the Attorney General ("OAG") proposes the repeal of Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 59, Collections, §59.3, concerning Reporting Delinquent Obligations Owed to the State.

The OAG published Notice of Intent to conduct a rule review of Chapter 59 in the February 10, 2012, issue of the Texas Register (37 TexReg 719). The review assessed whether the reasons for adopting the rules continue to exist. No comments were received during the review. As a result of this review, §59.3 is now proposed for repeal because the OAG has determined that the reasons for adopting the rule no longer exist.

Section 59.3 was adopted to enact the mandatory reporting requirements of Texas Government Code §2107.005, which formerly required state agencies and other units of state government to submit an annual report to the OAG regarding uncollected or delinquent obligations owed to the state. Texas Government Code §2107.005 was subsequently repealed by House Bill 1781, 82nd Legislature, Regular Session (2011), and Senate Bill 5, 82nd Legislature, Regular Session (2011), both of which became effective June 17, 2011.

Ronald Del Vento, Division Chief, Bankruptcy and Collections Division, has determined that for each year of the first five years following the repeal of §59.3, the public will benefit from the increased efficiency of government and agency operations because state agency resources will no longer be required to prepare and submit reports to the OAG in the format formerly contemplated by the repealed provisions of the former Texas Government Code §2107.005. Additionally, since the information required for the OAG’s efforts to collect delinquent obligations on behalf of the state is available in greater detail and on a more timely basis from other sources, the OAG will experience some nominal cost savings and increased efficiency associated with no longer having to expend agency’s resources to administer the receipt and collection of the reports formerly required by Texas Government Code §2107.005 and §59.3.

Mr. Del Vento has also determined that during the first five-year period following the repeal of §59.3, there will be no fiscal implications for state government or for local government as a result of the repeal. Further, he has determined that for each year of the first five years following the repeal of §59.3, there will be no economic cost to persons formerly required to comply with the provisions of the former rule. Finally, Mr. Del Vento has determined that the repeal of §59.3 will have no adverse effect on small business or local employment.

Written comments on this proposal may be submitted for 30 days following the publication of this notice to Ronald Del Vento, Division Chief, Bankruptcy and Collections Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4936, ronald.delvento@texasattorneygeneral.gov.

Because the reasons for adopting §59.3 no longer exist, the OAG is authorized by Texas Government Code §2001.039(c) to repeal the rule.

No other code, article or statute is affected by this proposal.

§59.3. Reporting Delinquent Obligations Owed to the State.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.
The Commission on State Emergency Communications (CSEC) proposes new §251.14, concerning the minimum requirements for VoIP Positioning Center Operators providing or facilitating the providing of 9-1-1 service using a dynamic Automatic Location Identification (ALI) solution.

In 2005 the Federal Communications Commission (FCC) adopted regulations requiring interconnected Voice Over Internet Protocol (VoIP) service providers (VSPs) to provide enhanced 9-1-1 service to their customers. In 2008, Congress passed the New and Emerging Technologies 911 Improvement Act of 2008 (2008 NET 911 Act), which provides in part:

It shall be the duty of each IP-enabled voice service provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the FCC, as in effect on the date of enactment of the New and Emerging Technologies 911 Improvement Act of 2008 and as such requirements may be modified by the Commission from time to time. (Codified at 47 U.S.C. §615a-1.)

VoIP Positioning Center Operators are not VSPs, nor are they required to register or be certified by either the FCC or the Public Utility Commission of Texas. VPCs are unregulated, third-parties that provide services and solutions to VSPs to allow for the providing of 9-1-1 service to the VSPs’ end-users. VPCs’ ability to provide service is predicated on the state’s 9-1-1 Entities’, including RPCs, authorizing and allowing them access to their 9-1-1 networks.

The purpose of new §251.14 is to provide minimum requirements to be followed by a VPC in providing 9-1-1 service to VSPs. The requirements are necessary in order to ensure a consistent and accurate level of 9-1-1 service is afforded each VSP end-user. The new section is consistent with National Emergency Number Association (NENA) Interim VoIP Architecture for Enhanced 9-1-1 Services. Additionally, the requirements serve to negate any competitive advantage to be gained by a VPC offering a level of service less than that required by the new section. Finally, the new section helps to ensure that there is no degradation in the level of 9-1-1 service provided to the end users of cable telcos as an increasing number of them shift to having 9-1-1 service implemented through VPCs using the dynamic ALI solution.

Ms. Merriweather has determined that for each year of the first five fiscal years (FY) that the new section is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the section.

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses or micro-businesses. Accordingly, CSEC has not prepared the economic impact statement or regulatory flexibility analysis that would otherwise be required.

Comments on the proposal may be submitted in writing to Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942 or by email to patrick.tyler@csec.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the Texas Register. Reply comments will be accepted for 15 days after the deadline for initial comments. For additional information, including all filed comments, please go to www.csec.texas.gov and click on the link titled VoIP 9-1-1 Service Project: Rule 251.14, VoIP Positioning Center Operator Minimum Requirements.


No other statute, article, or code is affected by the proposal.


FISCAL NOTE

Kelli Merriweather, CSEC’s executive director, has determined that for each year of the first five fiscal years (FY) that the new section is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the section.
(a) Purpose. The purpose of this rule is to establish minimum requirements for VoIP Positioning Center (VPC) Operators providing or facilitating the providing of 9-1-1 service using a dynamic Automatic Location Identification (ALI) solution. This rule is intended to provide the end-users of IP-enabled voice service providers (VSPs) with a consistent level of 9-1-1 service that is more comparable to wireline 9-1-1 service.

(b) Applicability. This rule is applicable to VPC Operators providing or facilitating the providing of 9-1-1 service to VSP end-users whose voice service is either fixed or nomadic, but non-mobile. Nomadic service is service that an end-user can access from any broadband connection. This rule provides the minimum standards for a VPC Operator to implement 9-1-1 service requirements.

(c) Registration. A VPC Operator shall register with the Commission and provide written notice to each 9-1-1 Entity in whose region or territory they provide VPC service. Registration is a prerequisite to accessing a 9-1-1 Entity's Network and 9-1-1 Database, for obtaining 9-1-1 Entity approval to obtain pseudo automatic number identifications (pANIs), and for accessing dedicated 9-1-1 trunking, as applicable. Registration shall be made on a form provided by Commission staff and includes:

1. VPC Operator name;
2. Services provided;
3. Name of 9-1-1 Entity in whose region or territory the VPC Operator provides service;
4. Name and contact information of its VSP customers;
5. Whether the VPC Operator collects or remits 9-1-1 service fees on behalf of any of its VSP customers' end-users.

(d) Service Plan. A VPC Operator shall submit to the Commission a service plan consisting of the pANIs obtained from the North America Numbering Plan Administrator and the Emergency Service Number (ESN) assignment associated with each pANI.

(e) Certification. A VPC Operator shall annually, and upon request by the Commission or a 9-1-1 Entity, update and certify the accuracy of its registration information.

(f) Coordination with 9-1-1 Entity. Upon request from the Commission or a 9-1-1 Entity in whose region or territory a VPC Operator provides service, the VPC Operator shall coordinate with the Commission or requesting 9-1-1 Entity to ensure compliance with this rule and the proper provisioning of 9-1-1 service.

(g) VPC Operator Minimum Requirements in Providing 9-1-1 Service. A VPC Operator shall:

1. Use the current Master Street and Address Guide (MSAG) of each 9-1-1 Entity in whose region or territory the Operator provides 9-1-1 service to:
   A. Validate end-user ALI;
   B. Assign wireline ESNs from Emergency Services Query Key (ESQK) pools created for such purpose; and
   C. Display valid English Language Translations (ELTs) matching the assigned wireline ESN;
2. Accept delta MSAG files in a manner consistent with the standard current format of initial MSAG files to maintain the MSAG for near real-time validation purposes;
3. Provide a pANI shell record containing the Automatic Number Information and ALI associated with the 9-1-1 call;
4. Provide the equivalent of MSAG-validated routing with associated wireline ESN, including the appropriate National Emergency Number Association (NENA) Class of Service (COS) code used by the 9-1-1 Entity in its region or territory;
5. Provide its VSP customer's NENA Company ID in the Company ID field in the ALI record associated with each 9-1-1 call. VPC Operator's NENA Company ID should be identified by the pANI. In areas where the 9-1-1 Database supports using two NENA Company IDs, the two Company IDs shall be populated as provided in NENA standard 02-010; and
6. Not use fictitious data in the pANI shell record associated with each 9-1-1 call.

(h) MSAG validation and ALI Discrepancies. A VPC Operator shall resolve MSAG validation errors and ALI discrepancies within three (3) business days of notification by a 9-1-1 Entity and provide written notice of the correction to the notifying 9-1-1 Entity. A VPC Operator shall verify that referred MSAG validation and ALI discrepancies have been resolved.

1. A VPC shall obtain prior approval from the notifying 9-1-1 Entity before resolving a validation or discrepancy using an address translation or alias. A notifying 9-1-1 Entity shall use its best efforts to approve/deny requests for translations or aliases within three (3) business days of receipt of a request from a VPC Operator.
2. A VPC shall refer questions about a 9-1-1 Entity's MSAG to the appropriate 9-1-1 Entity. If the VPC Operator does not receive a response within three (3) business days, it shall escalate the issue to the 9-1-1 Entity or a representative of the appropriate MSAG authority.

(i) ESQKs. Upon request from a 9-1-1 Entity, a VPC Operator will provide a listing of ESQKs used in the requesting 9-1-1 Entity's region or territory and a description of the standard period of aging and re-use cycle of ESQKs (e.g., how long ESQK information for the 9-1-1 call remains visible for call transfers).

(j) Conversion and Deletion of Static 9-1-1 ALI Records. A VPC Operator whose VSP customer has static 9-1-1 ALI records in the 9-1-1 Database shall ensure that such records are promptly unlocked and delete upon conversion to the dynamic ALI solution. A VSP shall provide written notice to all affected 9-1-1 Entities upon removal of the static records.

(k) Records and Information. To the extent permitted by Applicable Law, including 47 U.S.C. § 222(g), a VPC Operator will, upon request from the Commission or a 9-1-1 Entity, provide records and information regarding its VSP customers' end-users. Records and information submitted in response to a 9-1-1 Entity's request shall be kept confidential in accordance with Applicable Law, including Health and Safety Code § 771.061, and used for purposes of enhancing the provisioning of 9-1-1 service or emergency notification service.

(I) Compliance. A VPC Operator knowingly or repeatedly failing to comply with this rule may result in suspension by the Commission of the VPC Operator's authorization to request approval for pANIs or obtain approval to access 9-1-1 capabilities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 3, 2012.
TRD-201204090
PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.105, concerning General Reporting and Documentation Requirements, Methods, and Procedures; §355.112, concerning Attendant Compensation Rate Enhancement; §355.306, concerning Cost Finding Methodology; §355.308, concerning Direct Care Staff Rate Component; §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs; §355.505, concerning Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program; §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program; §355.509, concerning Reimbursement Methodology for Residential Care; §355.510, concerning Reimbursement Methodology for Emergency Response Services (ERS); §355.511, concerning Reimbursement Methodology for Home-Delivered Meals; §355.513, concerning Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program; §355.5902, concerning Reimbursement Methodology for Primary Home Care; and §355.6907, concerning Reimbursement Methodology for Day Activity and Health Services.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, proposes to amend these rules to 1) adopt uniform rules for how some providers may be automatically excused from submitting a cost report, 2) add Day Activity and Health Services (DAHS) to the Community-Based Alternatives (CBA) and Medically Dependent Children Program (MDCP) waiver programs, 3) delete obsolete language to reflect current agency practice, and 4) update references to legacy health and human services (HHS) agencies.

Under certain circumstances, HHSC may excuse a provider not participating in the Attendant Compensation Rate Enhancement from submitting a cost report. These exceptions have varied by program and been inconsistent in application. HHSC proposes to remove these exceptions from the program reimbursement methodology rules and group them together in §355.105(b)(4)(D). HHSC also proposes to put a cross-reference to §355.105(b)(4)(D) in each program reimbursement methodology rule to inform providers where to find the exceptions.

HHSC is also defining circumstances whereby a provider who is participating in the Attendant Compensation Rate Enhancement or the Nursing Facility Direct Care Staff Rate enhancement may be automatically excused from submission of a cost report, an Attendant Compensation Report, or a Nursing Facility Staffing and Compensation Report.

Effective September 1, 2012, HHSC is adding DAHS to the service arrays in the CBA and MDCP waivers. The Centers for Medicare and Medicaid Services (CMS) no longer allows the provision of DAHS in the State Plan to any individuals except those with intellectual and developmental disabilities. Per CMS directive, HHSC is adding DAHS as a service under §1915(i) of the Social Security Act, which allows for wider functional eligibility requirements than the State Plan. However the financial eligibility requirements for §1915(i) are more stringent than the State Plan requirements, so HHSC is adding DAHS to the CBA and MDCP waiver programs. This will allow individuals who are no longer eligible for State Plan DAHS and have income that exceeds the financial eligibility limit for §1915(i) services to continue to receive DAHS. As a result, HHSC is adding a reimbursement methodology for DAHS to CBA and MDCP.

Finally, HHSC is deleting obsolete language to reflect current agency practice and is updating references to legacy HHS agencies.

Section-by-Section Summary

HHSC proposes amendments to §355.105 as follows:

Revise subsection (b) to refer providers to paragraph (4)(D) of this subsection for direction as to when a cost report may be excused.

Revise subsection (b)(4)(D) to describe the conditions under which HHSC will excuse a provider from submitting a cost report, if the provider is not enrolled in the Attendant Compensation Rate Enhancement or the Nursing Facility Direct Care Staff Rate enhancement during the reporting period for the cost report in question.

HHSC proposes amendments to §355.112 as follows:

Add subsection (h)(2)(G) to excuse providers that are participating in the Attendant Compensation Rate Enhancement from submitting a cost report or Attendant Compensation Report if they did not provide any billable attendant services to DADS recipients during the reporting period.

HHSC proposes amendments to §355.306 as follows:

Add new paragraph (1) in subsection (a) to refer providers who are not participating in the rate enhancement program to revised §355.105(b)(4)(D) for conditions under which they may be excused from filing a cost report.

Delete current subsection (a)(2), which describes the reasons a provider may be excused from filing a cost report, as the reasons are now described in §355.105(b)(4)(D).

Revise subsection (e) to indicate when final cost reports are required from facilities that undergo a change of ownership.

HHSC proposes amendments to §355.308 as follows:

Add subsection (f)(2)(G) to excuse providers that are participating in the Nursing Facility Direct Care Staff Rate enhancement from submitting a cost report or Nursing Facility Staffing and Compensation Report if they did not provide any billable services to DADS recipients during the reporting period.

HHSC proposes amendments to §355.503 as follows:

Modify subsection (c)(1) to add DAHS as a service for which a reimbursement methodology will be determined in the CBA program.
Modify subsection (c)(2)(D) to change the name of the Personal Care III setting to Personal Care 3 to be consistent with agency terminology.

Add subsection (c)(7), which defines the reimbursement methodology for DAHS in the CBA program.

Modify subsection (e)(2) to delete the list of reasons a CBA provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete subsection (e)(4)(C) as obsolete language no longer reflecting agency procedures.

HHSC proposes amendments to §355.505 as follows:

Modify subsection (b)(3) to delete the list of reasons a Community Living Assistance and Support Services (CLASS) provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete subsection (c)(3)(C) as obsolete language no longer reflecting agency procedures.

HHSC proposes amendments to §355.507 as follows:

Add new subsection (f), which defines the reimbursement methodology for DAHS in the MDCP program.

HHSC proposes amendments to §355.509 as follows:

In subsection (b) modify paragraph (2) and delete paragraph (3) to delete the list of reasons a residential care services provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete subsection (c)(1)(C) as obsolete language no longer reflecting agency procedures.

Delete subsection (c)(2)(D) as redundant. The language already exists in §355.105(i).

HHSC proposes amendments to §355.510 as follows:

Modify subsection (d)(2) to delete the list of reasons an emergency response services provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete subsection (d)(3)(C) as obsolete language no longer reflecting agency procedures.

HHSC proposes amendments to §355.511(b) as follows:

Modify paragraph (2) to delete the list of reasons a home-delivered meals provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete paragraph (3) as no longer necessary.

Delete paragraph (4)(C) as obsolete language no longer reflecting agency procedures and renumber the subsequent paragraphs.

HHSC proposes amendments to §355.513(e) as follows:

Modify paragraph (2) to delete the list of reasons a Deaf-Blind Multiple Disabilities (DBMD) provider may be excused from filing a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete paragraph (3)(C) as obsolete language no longer reflecting agency procedures.

HHSC proposes amendments to §355.5902(b) as follows:

Modify paragraph (1) to delete the list of reasons a primary home care provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Delete paragraph (2)(B) as obsolete language no longer reflecting agency procedures.

HHSC proposes amendments to §355.6907 as follows:

Delete subsection (d)(3) as obsolete language no longer reflecting agency procedures.

Modify subsection (e) to make the wording about desk reviews consistent with that in other programs.

Modify subsection (f)(1) to delete the list of reasons a DAHS provider may be excused from submitting a cost report and replace it with a reference to revised §355.105(b)(4)(D).

Make changes throughout the section to remove references to legacy HHS agencies and replace with the current agency names.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amendments are in effect there will be no fiscal impact to state government. The amendments will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the sections.

Small Business and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendments. The proposed amendments do not require any changes in practice or any additional cost to a contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with these amendments. The amendments should not affect local employment.

Public Benefit

Ms. McDonald has also determined that, for each of the first five years the amendments are in effect, the expected public benefit is that the rules will clarify and consolidate in a central location the reasons whereby a provider may be excused from submitting a cost report and that obsolete language and references to legacy agencies will be removed from the rules. In addition, there is expected public benefit that individuals no longer eligible for State Plan DAHS may continue to receive DAHS.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the
public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment
Questions about the content of this proposal may be directed to Judy Myers in the HHSC Rate Analysis Department by telephone at (512) 491-1179. Written comments on the proposal may be submitted to Ms. Myers by fax to (512) 491-1998; by e-mail to judy.myers@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H400, P.O. Box 85200, Austin, Texas, 78708-5200, within 30 days of publication of this proposal in the Texas Register.

SUBCHAPTER A. COST DETERMINATION PROCESS
1 TAC §355.105, §355.112
Statutory Authority
The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission’s duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.105. General Reporting and Documentation Requirements, Methods, and Procedures.
(a) General reporting. Except where otherwise specified under this title, the Texas Health and Human Services Commission (HHSC) follows the requirements, methods, and procedures set forth in subsections (b) - (h) of this section to determine costs appropriate for use in the reimbursement determination process.

(b) Cost report requirements. Unless specifically stated in program rules or excused as described in paragraph (4)(D) of this subsection, each provider must submit financial and statistical information on cost report forms provided by HHSC, or on facsimiles that are formatted according to HHSC specifications and are pre-approved by HHSC staff, or electronically in HHSC-prescribed format in programs where these systems are operational. The cost reports must be submitted to HHSC in a manner prescribed by HHSC. The cost reports must be prepared to reflect the activities of the provider while delivering contracted services during the fiscal year specified by the cost report. Cost reports or other special surveys or reports may be required for other periods at the discretion of HHSC. Each provider is responsible for accurately completing any cost report or other special survey or report submitted to HHSC.

(1) Accounting methods. All financial and statistical information submitted on cost reports must be based upon the accrual method of accounting, except where otherwise specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) and in the case of governmental entities operating on a cash or modified accrual basis. For cost-reporting purposes, accrued expenses must be incurred during the cost reporting period and must be paid within 180 days after the end of that cost reporting period. In situations where a contracted provider, any of its controlling entities, its parent company/sole member, or its related-party management company has filed for bankruptcy protection, the contracted provider may request an exception to the 180-day requirement for payment of accrued allowable expenses by submitting a written request to the HHSC Rate Analysis Department. The written request must be submitted within 60 days of the date of the bankruptcy filing or at least 60 days prior to the due date of the cost report for which the exception is being requested, whichever is later. The contracted provider will then be requested by the HHSC Rate Analysis Department to provide certain documentation, which must be provided by the specified due date. Such exceptions due to bankruptcy may be granted for reasonable, necessary and documented accrued allowable expenses that were not paid within the 180-day requirement. Accrued revenues must be for services performed during the cost reporting period and do not have to be received within 180 days after the end of that cost reporting period in order to be reported as revenues for cost-reporting purposes. Except as otherwise specified by the cost determination process rules of this chapter, cost report instructions, or policy clarifications, cost reports should be prepared consistent with generally accepted accounting principles (GAAP), which are those principles approved by the American Institute of Certified Public Accountants (AICPA). Internal Revenue Service (IRS) laws and regulations do not necessarily apply to the preparation of the cost report. In cases where cost reporting rules differ from GAAP, IRS, or other authorities, HHSC rules take precedence for provider cost-reporting purposes.

(ii) Recordkeeping and adequate documentation. There is a distinction between noncompliance in recordkeeping, which equates with unavailability of a cost report and constitutes an administrative contract violation or, for the Nursing Facility program, may result in vendor hold, and a provider’s inability to provide adequate documentation, which results in disallowance of relevant costs. Each is discussed in the following paragraphs.

(A) Recordkeeping. Providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and other statistical information contained in the cost report. Providers must maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys, and schedules. HHSC may require supporting documentation other than that contained in the cost report to substantiate reported information.

(i) For Texas Department of Aging and Disability Services (DADS)-contracted providers, each provider must maintain records according to the requirements stated in 40 TAC §69.158 (relating to How long must contractors, subrecipients, and subcontractors keep contract-related records?) and according to the HHSC’s prescribed chart of accounts, when available.

(ii) If a contractor is terminating business operations, the contractor must ensure that:

(I) records are stored and accessible; and

(II) someone is responsible for adequately maintaining the records.

(iii) For nursing facilities, failure to maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys and schedules may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(iv) For all other programs, failure to maintain all workpapers and any other records that support the information submitted on the cost report relating to all allocations, cost centers, cost or statistical line items, surveys and schedules constitutes an administrative
contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(B) Adequate documentation. To be allowable, the relationship between reported costs and contracted services must be clearly and adequately documented. Adequate documentation consists of all materials necessary to demonstrate the relationship of personnel, supplies, and services to the provision of contracted client care or the relationship of the central office to the individual service delivery entity level. These materials may include, but are not limited to, accounting records, invoices, organizational charts, functional job descriptions, other written statements, and direct interviews with staff, as deemed necessary by HHSC auditors to perform required tests of reasonableness, necessity, and allowability.

(i) The minimum allowable statistical duration for a time study upon which to base salary allocations is four weeks per year, with one week being randomly selected from each quarter so as to assure that the time study is representative of the various cycles of business operations. One week is defined as only those days the contracted provider is in operation during seven continuous days. The time study can be performed for one continuous week during a quarter, or it can be performed over five or seven individual days, whichever is applicable, throughout a quarter. The time study must be 100% time study, accounting for 100% of the time paid the employee, including vacation and sick leave.

(ii) To support the existence of a loan, the provider must have available a signed copy of the loan contract which contains the pertinent terms of the loan, such as amount, rate of interest, method of payment, due date, and collateral. The documentation must include an explanation for the purpose of the loan and an audit trail must be provided showing the use of the loan proceeds. Evidence of systematic interest and principal payments must be available and supported by the payback schedule in the note or amortization schedule supporting the note. Documentation must also include substantiation of any costs associated with the securing of the loan, such as broker's fees, due diligence fees, lender's fees, attorney's fees, etc. To document allowable interest costs associated with related party loans, the provider is required to maintain documentation verifying the prime interest rate in accordance with §355.103(b)(9)(C) of this title for a similar type of loan as of the effective date of the related party loan.

(iii) For ground transportation equipment, a mileage log is not required if the equipment is used solely (100%) for provision of contracted client services in accordance with program requirements in delivering one type of contracted care. However, the contracted provider must have a written policy that states that the ground transportation equipment is restricted to that use and that policy must be followed. For ground transportation equipment that is used for several purposes (including for personal use) or multiple programs or across various business components, mileage logs must be maintained. Personal use includes, among other things, driving to and from a personal residence. At a minimum, mileage logs must include for each individual trip the date, the time of day (beginning and ending), driver, persons in the vehicle, trip mileage (beginning, ending, and total), purpose of the trip, and the allocation centers (the departments, programs, and/or business entities to which the trip costs should be allocated). Flight logs must include dates, mileage, passenger lists, and destinations, along with any other information demonstrating the purpose of the trips so that a relationship to contracted client care in Texas can be determined. For the purpose of comparison to the cost of commercial alternatives, documentation of the cost of operating and maintaining a private aircraft includes allowable expenses relating to the lease or depreciation of the aircraft; aircraft fuel and maintenance expenses; aircraft insurance, taxes, and interest; pilot expenses; hangar and other related expenses; mileage, vehicle rental or other ground transportation expense; and airport parking fees. Documentation demonstrating the allowable cost of commercial alternatives includes commercial airfare ticket costs at lowest fare offered (including all discounts) and associated expenses including mileage, vehicle rental or other ground transportation expense; airport parking fees; and any hotel or per diem due to necessary layovers (no scheduled flights at time of return trip).

(iv) To substantiate the allowable cost of leasing a luxury vehicle as defined in §355.103(b)(7)(C)(i) of this title, the provider must obtain at the time of the lease a separate quotation establishing the monthly lease costs for the base amount allowable for cost-reporting purposes as specified in §355.103(b)(7)(C)(i) of this title. Without adequate documentation to verify the allowable lease costs of the luxury vehicle, the reported costs shall be disallowed.

(v) For adequate documentation purposes, a written description of each cost allocation method must be maintained that includes, at a minimum, a clear and understandable explanation of the numerator and denominator of the allocation ratio described in words and in numbers, as well as a written explanation of how and to which specific business components the remaining percentage of costs were allocated.

(vi) To substantiate the allowable cost for staff training as defined in §355.103(b)(12)(A) of this title, the provider must maintain a description of the training verifying that the training pertained to contracted client care-related services or quality assurance. At a minimum, a program brochure describing the seminar or a conference program with description of the workshop must be maintained. The documentation must provide a description clearly demonstrating that the seminar or workshop provided training pertaining to contracted client care-related services or quality assurance.

(vii) Documentation regarding the allocation of costs related to noncontracted services, as specified in §355.102(j)(2) of this title, must be maintained by the provider. At a minimum, the provider must maintain written records verifying the number of units of noncontracted services provided during the provider's fiscal year, along with adequate documentation supporting the direct and allocated costs associated with those noncontracted services.

(viii) Adequate documentation to substantiate legal, accounting, and auditing fees must include, at a minimum, the amount of time spent on the activity, a written description of the activity performed which clearly explains to which business component the cost should be allocated, the person performing the activity, and the hourly billing amount of the person performing the activity. Other legal, accounting, and auditing costs, such as photocopy costs, telephone costs, court costs, mailing costs, expert witness costs, travel costs, and court reporter costs, must be itemized and clearly denote to which business component the cost should be allocated.

(ix) Providers who self insure for all or part of their employee-related insurance costs, such as health insurance and workers' compensation costs, must use one of the two following methods for determining and documenting the provider's allowable costs under the cost ceilings and any carry forward as described in §355.103(b)(10)(E) of this title.

(I) Providers may obtain and maintain each fiscal year's documentation to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years.
(II) If providers choose not to obtain and maintain commercial bids as described in subclause (I) of this clause, providers may claim as an allowable cost the health insurance actual paid claims incurred on behalf of the employees that does not exceed 10% of the payroll for employees eligible for receipt of this benefit. In addition, providers may claim as an allowable cost the workers’ compensation actual paid claims incurred on behalf of the employees, an amount each cost report period not to exceed 10% of the payroll for employees eligible for receipt of this benefit.

(III) Providers who self insure must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods.

(x) Providers who self insure for all or part of their coverage for nonemployee-related insurance, such as malpractice insurance, comprehensive general liability, and property insurance, must maintain documentation for each cost-reporting period to establish what their premium costs would have been had they purchased commercial insurance for total coverage. The documentation should include, at a minimum, bids from two commercial carriers. Bids must be obtained no less frequently than every three years. Providers who self insure must also maintain documentation that supports the amount of claims paid each year and any allowable costs to be carried forward to future cost-reporting periods. Governmental providers must document the existence of their claims management and risk management programs.

(xi) Regarding compensation of owners and related parties, providers must maintain the following documentation, at a minimum, for each owner or related party: a detailed written description of actual duties, functions, and responsibilities; documentation substantiating that the services performed are not duplicative of services performed by other employees; time sheets or other documentation verifying the hours and days worked; the amount of total compensation paid for these duties, with a breakdown detailing regular salary, overtime, bonuses, benefits, and other payments; documentation of regular, periodic payments and/or accruals of the compensation, documentation that the compensation is subject to payroll or self-employment taxes; and a detailed allocation worksheet indicating how the total compensation was allocated across business components receiving the benefit of these duties.

(I) Regarding bonuses paid to owners and related parties, the provider must maintain clearly defined bonus policies in its written agreements with employees or in its overall employment policy. At a minimum, the bonus policy must include the basis for distributing the bonuses including qualifications for receiving the bonus, and how the amount of each bonus is calculated. Other documentation must specify who received bonuses, whether the persons receiving bonuses are owners, related parties, or arm’s-length employees, and the bonus amount received by each individual.

(II) Regarding benefits provided to owners and related parties, the provider must maintain clearly defined benefit policies in its written agreements with employees or in its overall employment policy. At a minimum, the documentation must include the basis for eligibility for each type of benefit available, who is eligible to receive each type of benefit, who actually receives each type of benefit, whether the persons receiving each type of benefit are owners, related parties, or arm’s-length employees, and the amount of each benefit received by each individual.

(xii) Regarding all forms of compensation, providers must maintain documentation for each employee which clearly identifies each compensation component, including regular pay, overtime pay, incentive pay, mileage reimbursements, bonuses, sick leave, vacation, other paid leave, deferred compensation, retirement contributions, provider-paid instructional courses, health insurance, disability insurance, life insurance, and any other form of compensation. Types of documentation would include insurance policies; provider benefit policies; records showing paid leave accrued and taken; documentation to support hours (regular and overtime) worked and wages paid; and mileage logs or other documentation to support mileage reimbursements and travel allowances. For accrued benefits, the documentation must clearly identify the period of the accrual. For example, if an employee accrues two weeks of vacation during 20x1 and receives the corresponding vacation pay during 20x3, that employee’s compensation documentation for 20x3 should clearly indicate that the vacation pay received had been accrued during 20x1.

(I) For staff required to maintain continuous daily time sheets as per §355.102(j) of this title and subclause (II) of this clause, the daily timesheet must document, for each day, the staff member’s start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the actual time worked performing other functions, and paid time off. The employee must sign each timesheet. The employee’s supervisor must sign the timesheets each payroll period or at least monthly. Work schedules are unacceptable documentation for staff whose duties include multiple direct service types, both direct and indirect service component types, and both direct hands-on support and first level supervision of direct care workers.

(II) For the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), Home and Community-based Services (HCS) and Texas Home Living (TxHmL) programs, staff required to maintain continuous daily timesheets include staff whose duties include multiple direct service types, both direct and indirect service component types and/or both direct hands-on support and first level supervision of direct care workers.

(xiii) Management fees paid to related parties must be documented as to the actual costs of the related party for materials, supplies, and services provided to the individual provider, and upon which the management fees were based. If the cost to the related party includes owner compensation or compensation to related parties, documentation guidelines for those costs are specified in clause (xi) of this subparagraph. Documentation must be maintained that indicates stated objectives, periodic assessment of those objectives, and evaluation of the progress toward those objectives.

(xiv) For central office and/or home office costs, documentation must be maintained that indicates the organization of the business entity, including position, titles, functions, and compensation. For multi-state organizations, documentation must be maintained that clearly defines the relationship of costs associated with any level of management above the individual Texas contracted entity which are allocated to the individual Texas contracted entity.

(xv) Documentation regarding depreciable assets includes, at a minimum, historical cost, date of purchase, depreciable basis, estimated useful life, accumulated depreciation, and the calculation of gains and losses upon disposal.

(xvi) Providers must maintain documentation clearly itemizing their employee relations expenditures. For employee entertainment expenses, documentation must show the names of all persons participating, along with classification of the person attending, such as employee, nonemployee, owner, family of employee, client, or vendor.

(xvii) Adequate documentation substantiating the offsetting of grants and contracts from federal, state, or local government programs.
mments prior to reporting either the net expenses or net revenue must be maintained by the provider. As specified in §355.103(b)(15) of this title, such offsetting is required prior to reporting on the cost report. The provider must maintain written documentation as to the purpose for which the restricted revenue was received and the offsetting of the restricted revenue against the allowable and unallowable costs for which the restricted revenue was used.

(xviii) During the course of an audit or an audit desk review, the provider must furnish any reasonable documentation requested by HHSC auditors within ten working days of the request or a later date as specified by the auditors. If the provider does not present the requested material within the specified time, the audit or audit desk review is closed, and HHSC automatically disallows the costs in question.

(xix) Any expense that cannot be adequately documented or substantiated is disallowed. HHSC is not responsible for the contracted provider's failure to adequately document and substantiate reported costs.

(xx) Any cost report that is determined unauditable through a field audit or that cannot have its costs verified through a desk review will not be used in the reimbursement determination process.

(3) Cost report and methodology certification. Providers must certify the accuracy of cost reports submitted to HHSC in the format specified by HHSC. Providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements or is determined to contain misrepresented or falsified information. Cost report preparers must certify that they read the cost determination process rules, the reimbursement methodology rules, the cost report cover letter and cost report instructions, and that they understand that the cost report must be prepared in accordance with the cost determination process rules, the reimbursement methodology rules and cost report instructions. Not all persons who contributed to the completion of the cost report must sign the certification page. However, the certification page must be signed by a responsible party with direct knowledge of the preparation of the cost report. A person with supervisory authority over the preparation of the cost report who reviewed the completed cost report may sign a certification page in addition to the actual preparer.

(4) Requirements for cost report completion.

(A) A completed cost report must:

(i) be completed according to the cost determination rules of this chapter, program-specific allowable and unallowable rules, cost report instructions, and policy clarifications;

(ii) contain a signed, notarized, original certification page or an electronic equivalent where such equivalents are specifically allowed under HHSC policies and procedures;

(iii) be legible with entries in sufficiently dark print to be photocopied;

(iv) contain all pages and schedules;

(v) be submitted on the proper cost report form;

(vi) be completed using the correct cost reporting period;

(vii) contain a copy of the state-issued cost report training certificate except for cost reports submitted through the State of Texas Automated Information and Reporting System (STAIRS); and

(viii) if applicable, be submitted with the correct Consolidated Reporting Group Number as described in subsection (c)(3) of this section.

(B) Providers are required to report amounts on the appropriate line items of the cost report pursuant to guidelines established in the methodology rules, cost report instructions, or policy clarifications. Refer to program-specific reimbursement methodology rules, cost report instructions, or policy clarifications for guidelines used to determine placement of amounts on cost report line items.

(i) For nursing facilities, placement on the cost report of an amount, which was determined to be inaccurately placed, may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

(ii) For School Health and Related Services (SHARS), placement on the cost report of an amount, which was determined to be inaccurately placed, may result in an administrative contract violation as specified in §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)).

(iii) For all other programs, placement on the cost report of an amount, which was determined to be inaccurately placed, constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(C) A completed cost report must be filed by the cost report due date.

(i) For nursing facilities, failure to file a completed cost report by the cost report due date may result in vendor hold as specified in §355.403 of this title.

(ii) For SHARS, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(iii) For all other programs, failure to file a completed cost report by the cost report due date constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(D) HHSC may excuse providers from the requirement to submit a cost report. A provider that is not enrolled in Attendant Compensation Rate Enhancement as described in §355.112 of this title (relating to Attendant Compensation Rate Enhancement) for a specific program or the Nursing Facility Direct Care Staff Rate enhancement as described in §355.308 of this title (relating to Direct Care Staff Rate Component) during the reporting period for the cost report in question, is excused from the requirement to submit a cost report for such program if the provider meets one or more of the following conditions: [Exceptions are granted by HHSC as described by the program-specific reimbursement methodology rules. Providers who are excused from cost report submission will receive written notice from HHSC verifying that an exception has been granted.]

(i) For all programs, if the provider performed no billable services during the provider’s cost-reporting period.

(ii) For all programs, if the cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.
(iii) For all programs, if circumstances beyond the provider's control, such as the loss of records due to natural disasters or removal of records from the provider's custody by a regulatory agency, make cost-report completion impossible.

(iv) For all programs, if all of the contracts that the provider is required to include in the cost report have been terminated before the cost-report due date.

(v) For the Nursing Facility, ICF/MR, Assisted Living/Residential Care (AL/RC), and Residential Care (RC) programs, if the total number of days that the provider performed service for HHSC or DADS recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period.

(vi) For the Day Activity and Health Services (DAHS) program, if the provider's total units of service provided to HHSC or DADS recipients during the cost-reporting period is less than the total number of calendar days included in the cost-reporting period times 1.5.

(vii) For the Home-Delivered Meals program, if a provider agency served an average of fewer than 500 meals a month for the designated cost report period.

(viii) For the Department of Family and Protective Services (DFPS) 24-Hour Residential Child-Care program, if:

(I) the contract was not renewed;  
(II) only Basic Level services were provided;  
(III) the total number of state-placed days (DFPS days and other state agency days) was 10 percent or less of the total days of service provided during the cost-reporting period;  
(IV) the total number of DFPS-placed days was 10 percent or less of the total days of service provided during the cost-reporting period;  
(V) for facilities that provide Emergency Care Services only, the occupancy rate was less than 30 percent during the cost-reporting period; or  
(VI) for all other facility types except child-placing agencies and those providing Emergency Care Services, the occupancy rate was less than 50 percent during the cost-reporting period.

(5) Cost report year. A provider's cost report year must coincide with the provider's fiscal year as used by the provider for reports to the Internal Revenue Service (IRS) or with the state of Texas' fiscal year, which begins September 1 and ends August 31.

(A) Providers whose cost report year coincides with their IRS fiscal year are responsible for reporting to HHSC Rate Analysis any change in their IRS fiscal year and subsequent cost report year by submitting written notification of the change to HHSC Rate Analysis along with supportive IRS documentation. HHSC Rate Analysis must be notified of the provider's change in IRS fiscal year no later than 30 days following the provider's receipt of approval of the change from the IRS.

(B) Providers who chose to change their cost report year from their IRS fiscal year to the state fiscal year or from the state fiscal year to their IRS fiscal year must submit a written request to HHSC Rate Analysis by August 1 of state fiscal year in question.

(6) Failure to report allowable costs. HHSC is not responsible for the contracted provider's failure to report allowable costs, however any omitted costs which are identified during the desk review or audit process will be included in the cost report or brought to the attention of the provider to correct by submitting an amended cost report.

(c) Cost report due date.

(1) Providers must submit cost reports to HHSC Rate Analysis no later than 90 days following the end of the provider entity's fiscal year or 90 days from the transmittal date of the cost report forms, whichever due date is later.

(2) For SHARS, providers must submit cost reports to HHSC Rate Analysis as specified in §355.8443 of this title.

(3) For Primary Home Care (PHC), Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA), CLASS--Case Management Agency (CMA), and Community Based Alternatives (CBA)--Home and Community Support Services (HCSS), if a provider's legal entity controls more than one contract within a single program, the provider must submit a separate Consolidated Cost Reporting Schedule for each legal entity for each program.

(A) HHSC sends the Consolidated Cost Reporting Schedule to the provider for completion. The provider must complete and return the completed Consolidated Cost Reporting Schedule to HHSC Rate Analysis no later than 30 days after the end of the provider entity's fiscal year or 30 days after HHSC's transmittal date of the schedule to the provider, whichever due date is later.

(B) Upon receipt of the provider's completed Consolidated Cost Reporting Schedule, HHSC Rate Analysis will determine, and notify the provider of, the provider's Consolidated Reporting Group Number(s) as well as a list of the contract numbers associated with the Consolidated Reporting Group Number(s) for use in completing the provider's cost report(s).

(C) Providers in the programs named in this paragraph must submit cost reports to HHSC Rate Analysis no later than 120 days after the end of the provider entity's fiscal year or 120 days after HHSC's transmittal date of the Consolidated Cost Reporting Schedule to the provider for completion, whichever due date is later.

(D) Failure on the provider's part to submit a Consolidated Cost Reporting Schedule timely is not a good cause for failure to submit cost reports by the cost report due date specified in this paragraph.

(4) HHSC may grant extensions of due dates for good cause. A good cause is defined as a circumstance which the provider could not reasonably be expected to control and for which adequate advance planning and organization would not have been of any assistance. Providers must submit requests for extensions in writing to HHSC Rate Analysis. Requests for extensions must be received by HHSC Rate Analysis prior to the cost report due date. HHSC staff will respond in writing to requests within 15 days of receipt.

(5) HHSC may require additional financial and other statistical information, in the form of special surveys or reports, to ensure the fiscal integrity of the program. Providers must submit such additional information and/or special surveys or reports to HHSC Rate Analysis upon request by the date specified by HHSC Rate Analysis in its transmittal or cover letter to the special survey, report, or request for additional information.

(d) Amended cost report due dates. HHSC accepts submittal of provider-initiated or HHSC-requested amended cost reports as follows.

(1) Provider-initiated amended cost reports must be received no later than the date in subparagraph (A) or (B) of this paragraph, whichever occurs first. Amended cost reports received after the required date have no effect on the reimbursement determination. Amended cost report information that cannot be verified will not be
used in reimbursement determinations. Provider-initiated amended cost reports must be received no later than the earlier of:

(A) 60 days after the original due date of the cost report;

or

(B) 30 days prior to the public hearing on proposed reimbursement or reimbursement parameter amounts.

(2) HHSC-required amendments to the cost reports must be received on or before the date specified by HHSC in its request for the amended cost report. Failure to submit the requested amendment to the cost report by the due date is considered a failure to complete a cost report as specified in subsection (b)(4)(C) of this section.

(e) Field audit standards. HHSC performs cost report field audits in a manner consistent with Government Auditing Standards issued by the Comptroller General of the United States.

(f) Cost of out-of-state audits. As specified in §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), HHSC conducts desk reviews of all cost reports not selected for field audit. HHSC also conducts field audits of provider records and cost reports. Although the number of field audits performed each year may vary, HHSC seeks to maximize the number of field audited cost reports available for use in its cost projections. Whenever possible, all the records necessary to verify information submitted to HHSC on cost reports, including related party transactions and other business activities engaged in by the provider, must be accessible to HHSC audit staff within the state of Texas within fifteen working days of field audit or desk review notification. When records are not available to HHSC audit staff within the state of Texas, the provider must pay the actual costs for HHSC staff to travel and review the records out-of-state. HHSC must be reimbursed for these costs within 60 days of the request for payment.

(1) For nursing facilities, failure to reimburse HHSC for these costs within 60 days of the request for payment may result in vendor hold as specified in §355.403 of this title.

(2) For SHARS, failure to reimburse HHSC for these costs within 60 days of the request for payment constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.8443 of this title.

(3) For all other programs, failure to reimburse HHSC for these costs within 60 days of the request for payment constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title.

(g) Public hearings.

(1) Uniform reimbursements. For programs where reimbursements are uniform by class of service and/or provider type, HHSC will hold a public hearing on proposed reimbursements before HHSC approves reimbursements. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed statewide uniform reimbursements will be made available to the public. This material will include the proposed reimbursements, the inflation adjustments used to determine them, and the impact on reimbursements of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC.

(2) Contractor-specific reimbursements. For programs in which reimbursements are contractor-specific, HHSC will hold a public hearing on the reimbursement determination parameter dollar amounts (e.g., ceilings, floors, or program reimbursement formula limits) before HHSC approves parameter dollar amounts. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursement parameter dollar amounts. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursement parameter dollar amounts. At least ten working days before the public hearing takes place, material pertinent to the proposed reimbursement parameter dollar amounts will be made available to the public. This material will include the proposed reimbursement parameter dollar amounts, the inflation adjustments used to determine them, and the impact on the reimbursement parameter dollar amounts of the major cost limits. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC.

(h) Insufficient cost data. If an insufficient number of accurate, full-year cost reports is submitted, as would occur with a new program, or if there are insufficient available data, as would occur in changes in program design, changes in the definition of units of service or changes in regulations or program requirements, reimbursements may be based on a pro-forma analysis by HHSC staff. A pro-forma analysis is defined as an item-by-item, or classes-of-items, calculation of the reasonable and necessary expenses for a provider to operate. The analysis may involve assumptions about the salary of an administrator or program director, staff salaries, employee benefits and payroll taxes, building depreciation, mortgage interest, contracted client care expenses, and other building or administration expenses. To determine the cost per unit of service, HHSC adds all the pro-forma expenses and divides the total by the estimated number of units of service that a fully operational provider is likely to provide. The pro-forma analysis is based on available information that is determined to be sufficient, accurate, and reliable by HHSC, including valid cost report data and survey data. The pro-forma analysis is conducted in a way that ensures that the resultant reimbursements are sufficient to support the requirements of the contracted program. When HHSC staff determine that sufficient and reliable cost report data have become available, the pro-forma reimbursement determination may be replaced with a process based on cost reports.

(i) Limits on related-party salaries, wages and/or benefits. HHSC may place upper limits or caps on related-party salaries, wages, and/or benefits as follows:

(1) For related-party administrators and directors, the upper limit for salaries and wages is equal to the 90th percentile in the array of all non-related party annualized salaries, wages and/or benefits as reported by all contracted providers within a program. In addition, the hourly wage and/or benefits for related-party administrators and directors is limited to the annualized upper limit for related-party administrators and directors divided by 2,080.

(2) For related-party assistant administrators and assistant directors, the upper limit for salaries and wages is equal to the 90th percentile in the array of all non-related party annualized salaries, wages and/or benefits as reported by all contracted providers within a program. In addition, the hourly wage and/or benefits for related-party assistant administrators and assistant directors is limited to the annual-
ized upper limit for related-party assistant administrators and assistant directors divided by 2,080.

(3) For owners, partners, and stockholders (when the owner, partner, or stockholder is performing contract level administrative functions but is not the administrator, director, assistant administrator or assistant director), the upper limits for salaries and wages are equal to the upper limits for related-party administrators and directors.

(4) For all other staff types:

(A) For the Intermediate Care Facilities for Persons with Mental Retardation, Home and Community-based Services and Texas Home Living programs, related-party limitations are specified in §355.457 of this title (relating to Cost Finding Methodology), and §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(B) For all other programs, related-party salaries, wages and/or benefits are limited to reasonable and necessary costs as described in §355.102 of this title.

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), Home and Community-based Services (HCS), Texas Home Living (TxHmL), Primary Home Care (PHC); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency (DSA); Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Integrated Care Management (ICM)-HCSS; Deaf-Blind Multiple Disabilities Waiver (DBMD); CBA--Assisted Living/Residential Care (AL/RC) programs; and ICM AL/RC are eligible to participate in the attendant compensation rate enhancement. References in this section to CBA program services also apply to the parallel services offered under the ICM program.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of the ICF/MR, DAHS, RC, and CBA AL/RC programs and the HCS Supervised Living (SL)/Residential Support Services (RSS) and HCS and TxHmL Day Habilitation (DH) settings, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) for staff in the ICF/MR, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants. Staff performing attendant functions in both the HCS SL/RSS and HCS and TxHmL DH settings that combine to equal at least 80% of their total hours worked would be included in this designation.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attending supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, DBMD Interveners I, II or III, Qualified Mental Retardation Professionals (QMRPs), assistant QMRPs, direct care worker supervisors, direct care trainer supervisors, job coach supervisors, foster care providers, and laundry and housekeeping staff. In the case of HCS Supported Home Living, TxHmL Community Supports, PHC, CLASS, CBA--HCSS, and DBMD, staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver who is transporting consumers in the ICF/MR, DAHS, RC, and CBA AL/RC programs and the HCS SL/RSS and HCS and TxHmL DH settings.

(4) An attendant also includes a medication aide in the HCS SL/RSS setting and the ICF/MR, RC and CBA AL/RC programs.

(5) An attendant also includes direct care workers, direct care trainers and job coaches.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers’ compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center. For ICF/MR, attendant compensation is also subject to the requirements detailed in §355.457 of this title (relating to Cost Finding Methodology). For HCS and TxHmL, attendant compensation is also subject to the requirements detailed in §355.722 of this title (relating to Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers).

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title.

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment.

(1) For CBA--HCSS and AL/RC, CLASS--DSA, DBMD, DAHS, ICM--HCSS and AL/RC, RC and PHC, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate and a preferred participation level.
(A) For the PHC program, the participating provider must also specify if he wishes to have priority, nonpriority, or both priority and nonpriority services participate in the attendant compensation rate enhancement.

(B) For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs.

(2) For ICF/MR, HCS and TxHmL, an initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each component code a desire to participate or not to participate and a preferred participation level. All contracts of a component code within a specific program must either participate at the same level or not participate.

(A) For the ICF/MR program, the participating provider must also specify the services he wishes to have participate in the attendant compensation rate enhancement. Eligible services are residential services and day habilitation services. The participating provider must specify whether he wishes to participate for residential services only, day habilitation services only or both residential services and day habilitation services.

(B) For the HCS and TxHmL programs, eligible services are divided into two categories: non-day habilitation services and day habilitation services. The non-day habilitation services category includes SL/RSS, supported home living/community supports, respite, supported employment and employment assistance. The day habilitation services category includes day habilitation. The participating provider must specify whether he wishes to participate for non-day habilitation services only, day habilitation services only or both non-day habilitation services and day habilitation services. For providers delivering services in both the HCS and TxHmL programs, the categories selected for participation must be the same for their HCS and TxHmL programs.

(3) After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level.

(4) Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during the first open enrollment period after the limitation. Providers that were subject to an enrollment limitation may request to participate at any level during open enrollment beginning two years after limitation.

(5) Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section.

(6) To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disability Services' (DADS') signature authority designation form applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract or component code whose effective date is on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment or change of ownership and new contracts that are part of an existing component code are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS' signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contracts specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled.

(h) Attendant Compensation Report submittal requirements.

(1) Annual Attendant Compensation Report. For services delivered on or before August 31, 2009, providers must file Attendant Compensation Reports as follows. All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as deter-
recognized by HHSC, or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC, or its designee, as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) Participating providers whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title will replace the Attendant Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating providers may be required to submit Transition Attendant Compensation Reports in addition to required cost reports. The Transition Attendant Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Attendant Compensation Report or the provider's 2010 cost report. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the transition reporting period within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with transition reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section for the transition reporting period. Participating providers failing to submit an acceptable Transition Attendant Compensation Report within 60 days of the date of the HHSC request for the report will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(B) When a participating provider changes ownership through a contract assignment or change of ownership, the previous owner must submit an Attendant Compensation Report covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract-assignment or ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment or ownership-change effective date to the end of the provider's fiscal year.

(C) When one or more contracts or, for the ICF/MR, HCS and TxHmL programs, component codes of a participating provider are terminated, either voluntarily or involuntarily, the provider must submit an Attendant Compensation Report for the terminated contract(s) or component code(s) covering the period from the beginning of the provider's cost reporting period to the date recognized by HHSC, or its designee, as the contract or component code termination date. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) When one or more contracts or, for the ICF/MR, HCS and TxHmL programs, component codes of a participating provider is voluntarily withdrawn from participation as per subsection (x) of this section, the provider must submit an Attendant Compensation Report within 60 days of the date of withdrawal as determined by HHSC, covering the period from the beginning of the provider's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new contracts as defined in subsection (g) of this section, the cost reporting period will begin with the effective date of participation in the enhancement.

(F) Existing providers who become participants in the enhancement as a result of the open enrollment process described in subsection (e) of this section on any day other than the first day of their fiscal year are required to submit an Attendant Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the provider's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. These providers must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider did not provide any billable attendant services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other reports from all contracts as needed.

(4) Vendor hold. HHSC, or its designee, will place on hold the vendor payments for any participating provider who does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable report.

(A) Participating contracts or, for the ICF/MR, HCS and TxHmL programs, component codes that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will become nonparticipants retroactive to the first day of the reporting period in question and will be subject...
to an immediate recoupment of funds related to participation paid to the contractor for services provided during the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(B) Participating contracts or, for the ICF/MR, HCS and TxHmL programs, component codes that have terminated or undergone a contract assignment or ownership-change from one legal entity to a different legal entity and do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the contract assignment, ownership-change or termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts or component codes will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment, ownership-change or termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC, or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Report contents. Each Attendant Compensation Report and cost report functioning as an Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports and cost reports functioning as Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title. For the ICF/MR program, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.457 of this title. For the HCS and TxHmL programs, cost reports functioning as Attendant Compensation Reports must also be completed in accordance with the provisions of §355.722 of this title.

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs and for providers delivering services to both HCS and TxHmL clients, participation includes both the HCS and TxHmL programs. For PHC, participation is also determined separately for priority and nonpriority services. For ICF/MR, participation is also determined separately for residential services and day habilitation services. For HCS and TxHmL, participation is also determined separately for the non-day habilitation services category and the day habilitation services category as defined in subparagraph (f)(2)(B) of this section. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts or component codes voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts or components codes excluded from participation will have their participation end effective on the date determined by HHSC.

(B) Determination of attendant compensation rate component for nonparticipating contracts.

(1) For the PHC; DAHS; RC; CLASS--DSA; CBA--HCS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.

(A) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.

(B) Adjust the cost center data from subparagraph (A) of this paragraph in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.

(C) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from subparagraph (B) of this paragraph by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for PHC; DAHS; CLASS--DSA; CBA--HCS; ICM-HCSS; DBMD and by 1.07 for RC; CBA--AL/RC; and ICM AL/RC. The result is the attendant compensation rate component for nonparticipating contracts.

(D) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(2) For ICF/MR DH, ICF/MR residential services, HCS SL/RSS, HCS DH, HCS supported home living, HCS respite, HCS supported employment, HCS employment assistance, TxHmL DH, TxHmL community supports, TxHmL respite, TxHmL supported employment, and TxHmL employment assistance, for each level of need, HHSC will calculate an attendant compensation rate component for nonparticipating contracts for each service as follows:
(A) For each service, for each level of need, determine the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants. For ICF/MR, the fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). For HCS and TxHmL, the fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title for the rate period.

(B) For each service, for each level of need, multiply the percent of the fully-funded model rate in effect on August 31, 2010 for that service accruing from attendants from subparagraph (A) of this paragraph by the total adopted reimbursement rate for that service in effect on August 31, 2010. The result is the attendant compensation rate component for that service for nonparticipating contracts.

(C) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except in the case of increases to the attendant compensation rate component for nonparticipating contracts explicitly mandated by the Texas legislature and for adjustments necessitated by increases in the minimum wage. Adjustments necessitated by increases in the minimum wage are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.

(m) Determination of attendant compensation base rate for participating contracts.

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level.

(o) Enhanced attendant compensation. Contracts or component codes desiring to participate in the enhanced attendant compensation rate may request attendant compensation levels from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment.

(1) ICF/MR providers must select a single attendant compensation level for all contracts within a component code for the day habilitation and/or residential services they have selected for participation.

(2) HCS and TxHmL must select a single attendant compensation level for all contracts within a component code for the non-day habilitation and/or day habilitation services they have selected for participation.

(p) Granting attendant compensation rate enhancements. Eligible programs are divided into two populations for purposes of granting attendant compensation rate enhancements. The first population includes the PHC; DAHS; RC; CLASS--DSA; CBA--HCSS; ICM-HCSS; DBMD; CBA--AL/RC; and ICM AL/RC programs and the second population includes the ICF/MR; HCS; and TxHmL programs. Enhancements for the two populations are funded separately; funds intended for enhancements for the first population of programs will never be used for enhancements for the second population and funds intended for enhancements for the second population of programs will never be used for enhancements for the first population. For each population of programs, HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, into two groups: pre-existing enhancements, which providers request to carry over from the prior year, and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by providers who were nonparticipants in the prior year or by providers who were participants in the prior year who seek additional enhancements. Using the process described herein separately for each population of programs, HHSC first determines the distribution of carry-over enhancements. If funds are available after the distribution of carry-over enhancements, HHSC determines the distribution of newly-requested enhancements. HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts and/or component codes requesting each enhancement level and multiplies this number by the enhancement rate add-on amount associated with that enhancement level as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts and component codes are notified, in a manner determined by HHSC, as to the disposition of their request for attendant compensation rate enhancements.

(r) Total attendant compensation rate for participating providers. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment.

(s) Spending requirements for participating contracts and component codes. HHSC will determine from the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report, as specified in subsection (h) of this section and other appro-
private data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for each participating contract or component code. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs and providers delivering services in both the HCS and TxHmL programs whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

1. The accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

2. The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts or component codes in subsection (l) of this section.

3. In cases where more then one enhancement level is in effect during the reporting period, the spending requirement will be based on the weighted average enhancement level in effect during the reporting period calculated as follows:

   A. Multiply the first enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the first enhancement level was in effect.

   B. Multiply the second enhancement level in effect during the reporting period by the most recently available, reliable Medicaid units of service utilization data for the time period the second enhancement level was in effect.

   C. Sum the products from subparagraphs (A) and (B) of this paragraph.

   D. Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid units of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

   (i) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC, or its designee. If a subsequent review by HHSC or audit results in adjustments to the annual Attendant Compensation Report or cost reporting, as described in subsection (h) of this section, that change the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC, or its designee, will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter. Providers notified of a recoupment based on an Attendant Compensation Report described in subsection (h)(2)(A) or (h)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Attendant Compensation Report with the provider's next full-year cost report. The request must be in writing and must be received by HHSC Rate Analysis by hand delivery, United States (U.S.) mail, or special mail delivery no later than 30 days after the date on the written notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. The written request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

   (u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

   1. Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report does not represent its current attendant compensation levels.

   A. A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted, and the enrollment limitation specified in the notification letter will apply.

   B. A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification letter indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support an attendant compensation level different from what is indicated in the notification letter will result in a rejection of the request, and the enrollment limitation specified in the notification letter will apply.

   C. A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification letter will apply.
(D) If the provider's Attendant Compensation Report or cost report functioning as an Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendees below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report or cost report functioning as an Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment or change of ownership that is an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment or change of ownership that is an ownership-change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers or component codes required to submit an Attendant Compensation Report due to a termination as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15.

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15.

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation after a contract assignment. Participation after a contract assignment is determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation remains the same while the assignor's level of participation changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments, the level of participation of the assignor contract(s) will continue unchanged under the assignee contract(s).

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC, or its designee, on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h) of this section, HHSC, or its designee, will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC, or its designee. HHSC, or its designee, will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC, or its designee. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts or component codes wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. The requests will be effective the first of the month following the receipt of the request.
Contracts or component codes voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as part of a component code must request withdrawal of all the contracts in the component code.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as part of a component code must request the same reduction for all of the contracts in the component code.

(2) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title.

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(dd) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced attendant compensation rate funds.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) An acceptable Attendant Compensation Report for the reporting period completed in accordance with all applicable rules and instructions was received by HHSC Rate Analysis at least 30 days prior to the date on which HHSC determined how available reinvestment funds would be distributed.

(D) The DADS contract that was in effect during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined and there has been no ownership change from one legal entity to a different legal entity.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) For each qualifying report, HHSC subtracts the attendant compensation revenue per unit of service from the attendant compensation spending per unit of service and determines the number of full levels by which attendant compensation costs exceeded attendant compensation revenues. This number is multiplied by the add-on value of a level during the reporting period and the product is multiplied by the units of service provided during the reporting period as determined by HHSC.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until enhancements are granted within available funds.

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

(ee) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same identical persons as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, for two or more commonly owned corporations, or for a combined entity that controls more than one participating contract or component code in a program (with RC and CBA AL/RC considered a single program, and HCS and TxHmL considered a single program), compliance with the spending requirements detailed in subsection (s) of this section can be determined in the aggregate for all participating contracts or component codes in the program controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year, the effective date of the change of ownership of its last participating contract or component code in the program, or the effective date of the termination of its last participating contract or component code in the program rather than requiring each contract or component code to meet its spending requirement individually. Corporations that do not meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Attendant Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.
(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. For the ICF/MR, HCS, TxHmL, DAHS, RC, DBMD, CBA--AL/RC and ICM AL/RC programs, contracts or component codes that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (s) of this section, are excluded from all aggregate spending calculations. These contracts’ or component codes’ compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(II) Conditions of participation for day habilitation. The following conditions of participation apply to each ICF/MR, HCS and TxHmL provider specifying its wish to have day habilitation services participate in the attendant compensation rate enhancement.

(1) Job trainer and job coach compensation and hours must be reported on the required cost report items (e.g., hours, salaries and wages, payroll taxes, employee benefits/insurance/workers’ compensation, contract labor costs, and personal vehicle mileage reimbursement). This requirement applies to providers who directly provide day habilitation “in-house”, providers who contract with a related party to provide day habilitation and providers who contract with a non-related party to provide day habilitation. Day habilitation costs cannot be combined and reported in one cost report item.

(2) The provider must ensure access to any and all records necessary to verify information submitted to HHSC onAttendant Compensation Reports and cost reports functioning as an Attendant Compensation Report. This requirement includes ensuring access to records held by the provider, a related-party day habilitation provider and a non-related-party day habilitation provider.

(3) Failure to comply with the requirements of paragraphs (1) and (2) of this subsection will result in recoupment of all attendant compensation rate enhancement funds associated with the day habilitation service for the provider for the reporting period in question.

(4) HHSC will require each ICF/MR, HCS and TxHmL provider specifying their wish to have day habilitation services participate in the attendant compensation rate enhancement to certify during the enrollment process that it will comply with the requirements of paragraphs (1) - (3) of this subsection.

(gg) New contracts within existing component codes. For ICF/MR, HCS and TxHmL, new contracts within existing component codes will be assigned a level of participation equal to the existing component code’s level of participation effective on the start date of the contract as recognized by HHSC or its designee.

(hh) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

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For further information, please call: (512) 424-6900

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.306, §355.308

Statutory Authority

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission’s duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.


(a) Cost reports. Cost reporting requirements vary depending on whether the provider participates in the Direct Care Staff Rate enhancement program. All providers who participate in the rate enhancement program must file a cost report, as described in §355.308 of this title (relating to Direct Care Staff Rate Component). A provider that is [Providers] not participating in the rate enhancement program must file a cost report unless:

(1) the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), or

(2) [+] the cost report would represent costs accrued during a time period immediately preceding a period of certification, if the decertification period was greater than either 30 calendar days or one entire calendar month.

(2) [++] the cost report would be a final cost report (due to a change of ownership or the facility’s; no longer contracts to serve Medicaid clients) and one of the following applies:

(4A) the final cost reporting period would end after more than 30 calendar days, or more than one entire calendar month before the end of the facility’s cost report fiscal year, during the reporting period in question; or

(4B) the Texas Health and Human Services Commission (HHSC), or its designee, has excluded the provider from submitting a final cost report because:

(4A) the provider was due before the appropriate cost report form was finalized, which would result in the final cost report being completed on an inappropriate cost report form; or

(4A) the facility was controlled by at least two different owners during a single calendar year and each owner otherwise has submitted a cost report with an ending date that fell within that calendar year.

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(3) The cost-reporting period would be less than or equal to 30 calendar days or one entire calendar month.

(b) Exclusion of and adjustments to certain reported expenses. Providers are responsible for eliminating unallowable expenses from the cost report. HHSC reserves the right to exclude any unallowable costs from the cost report and to exclude entire cost reports from the reimbursement determination database if there is reason to doubt the accuracy or allowability of a significant part of the information reported.

(1) Cost reports included in the database used for reimbursement determination.

(A) Individual cost reports will not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(B) In the event that all cost reports submitted for a specific facility are disqualified through the application of subparagraph (A)(i) and/or (ii) of this paragraph, the facility will not be represented in the reimbursement database for the cost report year in question.

(2) Adjustments and exclusions of cost report data include, but are not necessarily limited to:

(A) Fixed capital asset costs.

(i) HHSC staff determine fixed capital asset costs as detailed in this section.

(ii) Fixed capital asset costs are reimbursed in the form of a use fee calculated as described in §355.307 of this title (relating to Reimbursement Setting Methodology). The following fixed capital charges are excluded from the reimbursement base:

(I) building and building equipment depreciation and lease expense;

(II) mortgage interest;

(III) land improvement depreciation; and

(IV) leasehold improvement amortization.

(B) Limits on other facility and administration costs. To ensure that the results of HHSC’s cost analyses accurately reflect the costs that an economic and efficient provider must incur, HHSC may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. HHSC sets upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i) total buildings and equipment rental or lease expense;

(ii) total other rental or lease expense for transportation, departmental, and other equipment;

(iii) building depreciation;

(iv) building equipment depreciation;

(v) departmental equipment depreciation;

(vi) leasehold improvement amortization;

(vii) other amortization;

(viii) total interest expense;

(ix) total insurance for buildings and equipment;

(x) facility administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xi) assistant administrator salary, wages, and/or benefits with the cap based on an array of nonrelated-party assistant administrator salaries, wages, and/or benefits;

(xii) facility owner, partner, or stockholder salaries, wages, and/or benefits (when the owner, partner, or stockholder is not the facility administrator or assistant administrator), with the cap based on an array of nonrelated-party administrator salaries, wages, and/or benefits;

(xiii) other administrative expenses including the cost of professional and facility malpractice insurance, advertising expenses, travel and seminar expenses, association dues, other dues, professional service fees, management consultant fees, interest expense on working capital, management fees, other fees, and miscellaneous office expenses; and

(xiv) total central office overhead expenses or individual central office line items. Individual line item caps are based on an array of all corresponding line items.

(C) Occupancy adjustments. HHSC adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i) 85%; or

(ii) the overall average occupancy rate for contracted beds in facilities included in the rate base during the cost reporting periods included in the base.

(D) Cost projections. HHSC projects certain expenses in the reimbursement base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective reimbursement applies as specified in §355.108 of this title (relating to Determination of Inflation Indices).

(3) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in paragraph (1)(A)(i) of this subsection.

(c) Reimbursement determinations and allowable costs. Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determinations any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers.

(d) General information. In addition to the requirements of this section, cost reports will be governed by the information in §355.101 of this title (relating to Introduction), §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification...
of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), and §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(e) Final cost reports for change of ownership. When a facility changes ownership, for a provider who participates in the rate enhancement program, the prior owner must submit a final cost report as described in §355.308 of this title. When a facility changes ownership, for a provider not participating in the rate enhancement program, the prior owner is excused from submitting a final cost report and, if its prior year's cost report is pending audit completion, the audit will be suspended and the cost report excluded from the final cost report database. Except when excused from the requirement to submit a cost report according to subsection (a) of this section, when a facility changes ownership, the prior owner must submit a completed cost report reflecting the facility's activities from the beginning of the prior owner's cost report fiscal year until the ownership change effective date. The prior owner's vendor payments may be held until HHSC receives an acceptable final cost report according to 40 TAC §19.2308(c)(1)(A) (relating to Change of Ownership).

[(4) In cases where the prior owner's vendor payment is held, within seven calendar days of receipt by HHSC of an acceptable final cost report, HHSC will forward the final cost report to audit.]

[(2) In cases where the facility is sold and its prior year's cost report is pending audit completion, the owner's vendor payment may be held until the audit of the prior year's cost report and the final cost report are complete.]

(f) Requirements for cost report completion. A completed nursing facility cost report must:

(1) meet the definition of completed cost report specified in §355.105(b)(4)(A) of this title;
(2) have attached the property appraisal used to determine the allowable appraised property value as described in subsection (g) of this section;
(3) not report figures for days of service and number of beds that reflect occupancy of greater than 100%;
(4) have a management contract attached, if applicable; and
(5) have a lease agreement attached, if applicable.

(g) Allowable appraised property values. Allowable appraised property values are determined as follows:

(1) Proprietary facilities. The allowable appraised values of proprietary facilities to be reported on Texas Medicaid cost reports are determined from local property taxing authority appraisals. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(2) Tax exempt facilities. The allowable appraised property values for tax exempt facilities are determined as follows:

(A) Tax exempt facilities provided an appraisal from their local property taxing authority. Tax exempt facilities provided an appraisal from their local property taxing authority must report this appraised value on their Texas Medicaid cost report. The year of the property appraisal must be the calendar year within which the provider's cost report fiscal year ends, or the prior calendar year.

(B) Tax exempt facilities not provided an appraisal from their local property taxing authority. Tax exempt facilities not provided an appraisal from their local property taxing authority because of an "exempt" status must provide documentation received from the local taxing authority certifying exemption for the current reporting period and must contract with an independent appraiser to appraise the facility land and improvements. These independent appraisals must meet the following criteria.

(i) The appraisal must value land and improvements using the same basis used by the local taxing authority under Texas laws regarding appraisal methods and procedures.

(ii) The appraisal must be updated every five years with the initial appraisal setting the five-year interval.

(I) Facilities achieving exempt status during their fiscal year ending in calendar year 1997 or a subsequent year must submit an initial appraisal to HHSC's Rate Analysis Department as part of their cost report for the fiscal year during which the exempt status was achieved. This appraisal must be reflective of the facility's appraised value during that fiscal year.

(II) If a facility is reappraised due to improvements or reconstruction as defined in clause (iii) of this subparagraph, a new five-year interval will be set.

(iii) Facilities making capital improvements, or requiring reconstruction due to fire, flood, or other natural disaster, when the improvements or reconstruction cost more than $2,000 per licensed bed, may contract with an independent appraiser to have land and improvements reappraised within the cost reporting period in which the improvement(s) is placed into service.

(iv) If for any reason an appraisal becomes available from the local taxing authority for a provider who previously lacked such an appraisal, the provider must report, on the next Texas Medicaid cost report submitted, the local taxing authority's appraised values instead of the independent appraisal values.

(3) Governmental facilities. Governmental facilities are exempt from the requirement to report an appraised property value.

(h) In addition to the requirements of §355.102 and §355.103 of this title, the following apply to costs for the nursing facilities (NF) program.

(1) Medical costs. The costs for medical services and items delineated in 40 TAC §19.2601 (relating to Vendor Payment) are allowable. These costs must also comply with the general definition of allowable costs as stated in §355.102 of this title.

(2) Chaplaincy or pastoral services. Expenses for chaplaincy or pastoral services are allowable costs.

(3) Voucherable costs. Except as detailed in subparagraphs (A) and (B) of this paragraph, any expenses directly reimbursable to the provider through a voucher payment and any expenses in excess of the limit, or ceiling, for a voucher payment system are unallowable costs.

(A) The ventilator dependent supplemental voucher system and the children with tracheostomies supplemental voucher system are not subject to the cost reporting restrictions described in this paragraph.

(B) Select voucher systems, when indicated by department procedures, are not subject to the cost reporting restrictions described in this paragraph. To avoid the possibility of providers being reimbursed through the voucher system and the daily rate for the same expenses, the department may not waive the cost reporting restrictions described in this paragraph unless the following criteria are met:

(i) the voucher system is a temporary system;
(iii) the costs are not represented in the payment rate until after the voucher system has been discontinued.

(4) Preferred items. Costs for preferred items which are billed to the recipient, responsible party, or the recipient's family are not allowable costs.

(5) Preadmission Screening and Annual Resident Review (PASARR) expenses. Any expenses related to the direct delivery of specialized services and treatment required by PASARR for residents are unallowable costs.

(6) Advanced Clinical Practitioner (ACP) or Licensed Professional Counselor (LPC) services. Expenses for services provided by an ACP or LPC are unallowable costs.

§355.308. Direct Care Staff Rate Component.

(a) Direct care staff cost center. This cost center will include compensation for employee and contract labor Registered Nurses (RNs), including Directors of Nursing (DONs) and Assistant Directors of Nursing (ADONs); Licensed Vocational Nurses (LVNs), including DONs and ADONs; medication aides; and nurse aides performing nursing-related duties for Medicaid contracted beds.

(1) Compensation to be included for these employee staff types is the allowable compensation defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) that is reported as either salaries and/or wages (including payroll taxes and workers' compensation) or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items are not to be included in this cost center.

(2) Direct care staff who also have administrative duties not related to nursing must properly direct charge their compensation to each type of function performed based upon daily time sheets maintained throughout the entire reporting period.

(3) Nurse aides must meet the qualifications enumerated under 40 TAC §19.1903 (relating to Required Training of Nurse Aides) to be included in this cost center. Nurse aides include certified nurse aides and nurse aides in training as per 40 TAC §94.3(k), (relating to Nurse Aide Training and Competency Evaluation Program (NATCEP) Requirements).

(4) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes (such as FICA, Medicare, and federal and state unemployment insurance) and who perform tasks routinely performed by employees. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title (relating to Specifications for Allowable and Unallowable Costs).

(5) For facilities receiving supplemental reimbursement for children with tracheostomies requiring daily care as described in §355.307(b)(3)(F) of this title (relating to Reimbursement Setting Methodology), staff required by 40 TAC §19.901(14)(C)(iii) (relating to Quality of Care) performing nursing-related duties for Medicaid contracted beds are included in the direct care staff cost center.

(6) For facilities receiving supplemental reimbursement for qualifying ventilator-dependent residents as described in §355.307(b)(3)(E) of this title (relating to Reimbursement Setting Methodology), Registered Respiratory Therapists and Certified Respiratory Therapy Technicians are included in the direct care staff cost center.

(7) Nursing facility administrators and assistant administrators are not included in the direct care staff cost center.

(8) Staff members performing more than one function in a facility without a differential in pay between functions are categorized at the highest level of licensure or certification they possess. If this highest level of licensure or certification is not that of an RN, LVN, medication aide, or certified nurse aide, the staff member is not to be included in the direct care staff cost center but rather in the cost center where staff members with that licensure or certification status are typically reported.

(9) Paid feeding assistants are not included in the direct care staff cost center and are not to be counted toward the staffing requirements described in subsection (j) of this section. Paid feeding assistants are intended to supplement certified nurse aides, not to be a substitute for certified or licensed nursing staff.

(b) Rate year. The standard rate year begins on the first day of September and ends on the last day of August of the following year.

(c) Open enrollment. Open enrollment for the enhanced direct care staff rates will begin on the first day of July and end on the last day of that same July preceding the rate year for which payments are being determined unless the Texas Health and Human Services Commission (HHSC) notified providers prior to the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(d) Enrollment contract amendment. An initial enrollment contract amendment is required from each facility choosing to participate in the enhanced direct care staff rate. Participating and nonparticipating facilities may request to modify their enrollment status (i.e., a nonparticipant can request to become a participant, a participant can request to become a nonparticipant, a participant can request to change its enhancement level) during any open enrollment period. Nonparticipants and participants requesting to increase their enrollment levels will be limited to requesting increases of three or fewer enhancement levels during any single open enrollment period unless such limits are waived by HHSC. Requests to modify a facility's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (c) of this section. If the last day of the open enrollment period falls on a weekend, a national holiday, or a state holiday, then the first business day following the last day of the open enrollment period is the final day the receipt of the enrollment contract amendment will be accepted. An enrollment contract amendment that is not received by the stated deadline will not be accepted. A facility from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation in effect during the open enrollment period within available funds until the facility notifies HHSC in accordance with subsection (r) of this section that it no longer wishes to participate or until the facility's enrollment is limited in accordance with subsection (i) of this section. If HHSC determines that funds are not available to continue participation at the level of participation in effect during the open enrollment period, facilities will be notified as per subsection (ee) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized representative as per the Texas Department of Aging and Disabilities Services (DADS) signature authority designation form applicable to the provider's contract or ownership type, and be legible.

(e) New facilities. For purposes of this section, for each rate year a new facility is defined as a facility delivering its first day of service to a Medicaid recipient after the first day of the open enrollment period, as defined in subsection (c) of this section, for that rate year. Facilities that underwent an ownership change are not considered new facilities. For purposes of this subsection, an acceptable enrollment
contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized representative as per the DADS signature authority designation form applicable to the provider's contract or ownership type, and received by HHSC within 30 days of the mailing of notification to the facility by HHSC that such an enrollment contract amendment must be submitted. New facilities will receive the direct care staff base rate as determined in subsection (k) of this section with no enhancements. For new facilities specifying their desire to participate on an acceptable enrollment contract amendment, the direct care staff rate is adjusted as specified in subsection (l) of this section, effective on the first day of the month following receipt by HHSC of the acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited as per subsection (j)(3) of this section during the most recent enrollment, enrollment for new facilities will be subject to that same limitation.

(f) Staffing and Compensation Report submittal requirements.

(1) Annual Staffing and Compensation Report. For services delivered on or before August 31, 2009, providers must file Staffing and Compensation Reports as follows. All participating facilities will provide HHSC, in a method specified by HHSC, an Annual Staffing and Compensation Report reflecting the activities of the facility while delivering contracted services from the first day of the rate year through the last day of the rate year. This report will be used as the basis for determining compliance with the staffing requirements and recoupment amounts as described in subsection (n) of this section, and as the basis for determining the spending requirements and recoupment amounts as described in subsection (o) of this section. Participating facilities failing to submit an acceptable Annual Staffing and Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC.

(A) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a Staffing and Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the rate year.

(B) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(C) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report covering the period from the beginning of the rate year to the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(D) Participating facilities whose cost report year coincides with the state of Texas fiscal year as per §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) are exempt from the requirement to submit a separate Annual Staffing and Compensation Report. For these facilities, their cost report will be considered their Annual Staffing and Compensation Report.

(2) For services delivered on September 1, 2009, and thereafter, cost reports as described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures) will replace the Staffing and Compensation Report with the following exceptions:

(A) For services delivered from September 1, 2009, to August 31, 2010, participating facilities may be required to submit Transition Staffing and Compensation Reports in addition to required cost reports. The Transition Staffing and Compensation Report reporting period will include those days in calendar years 2009 and 2010 not included in either the 2009 Staffing and Compensation report or the facility's 2010 cost report.

(B) When a participating facility changes ownership, the prior owner must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the ownership-change effective date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. The new owner will be required to submit a cost report covering the period from the day after the date recognized by HHSC or its designee as the ownership-change effective date to the end of the facility's fiscal year.

(C) Participating facilities whose contracts are terminated either voluntarily or involuntarily must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section.

(D) Participating facilities who voluntarily withdraw from participation as per subsection (r) of this section must submit a Staffing and Compensation Report covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC, covering the period from the beginning of the facility's cost reporting period to the date of withdrawal as determined by HHSC. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(E) For new facilities as defined in subsection (e) of this section, the cost reporting period will begin with the effective date of participation in enhancement.

(F) Existing facilities which become participants in the enhancement as a result of the open enrollment process described in subsection (c) of this section on any day other than the first day of their fiscal year are required to submit a Staffing and Compensation Report with a reporting period that begins on their first day of participation in the enhancement and ends on the last day of the facility's fiscal year. This report will be used as the basis for determining any recoupment amounts as described in subsections (n) and (o) of this section. These facilities must still submit a cost report covering the entire cost reporting period. The cost report will not be used for determining any recoupment amounts.

(G) A participating provider that is required to submit a cost report or Attendant Compensation Report under this paragraph will be excused from the requirement to submit a report if the provider...
did not provide any billable services to DADS recipients during the reporting period.

(3) Other reports. HHSC may require other Staffing and Compensation Reports from all facilities as needed.

(4) Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating facility that does not submit a timely report as described in paragraph (1) of this subsection, or for services delivered on or after September 1, 2009, a timely report as described in paragraph (2) of this subsection completed in accordance with all applicable rules and instructions. This vendor hold will remain in effect until HHSC receives an acceptable report.

(A) Participating facilities that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection or, for cost reports, the due dates described in §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC, or its designee, funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(B) Participating facilities with an ownership change or contract termination that do not submit an acceptable report completed in accordance with all applicable rules and instructions within 60 days of the change in ownership or contract termination will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These facilities will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsections (n) and/or (o) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

(5) Provider-initiated amended accountability reports and cost reports functioning as Staffing and Compensation Reports. Reports must be received prior to the date the provider is notified of compliance with spending and/or staffing requirements for the report in question as per subsections (n) and/or (o) of this section.

(g) Report contents. Annual Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports will include any information required by HHSC to implement this enhanced direct care staff rate.

(h) Completion of Reports. All Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the state fiscal year 2002 report, all Staffing and Compensation Reports and cost reports functioning as Staffing and Compensation Reports must be completed by preparers who have attended the required nursing facility cost report training as per §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs).

(i) Enrollment limitations. A facility will not be enrolled in the enhanced direct care staff rate at a level higher than the level it achieved on its most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report. HHSC will issue a notification letter that informs a facility in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period.

(1) Requests for revision. A facility may request a revision of its enrollment limitation if the facility's most recently available, audited Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report does not represent its current staffing levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted and the enrollment limitation specified in the notification letter will apply.

(B) A facility that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the facility met a higher staffing level than the notification letter indicates. In such cases, the facility's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the facility to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support a staffing level different than indicated in the notification letter will result in a rejection of the request and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the facility or legally authorized to bind the facility, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS signature authority designation form for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted and the enrollment limitation specified in the notification letter will apply.

(D) If the facility's Staffing and Compensation Report or cost report functioning as its Staffing and Compensation Report for the rate year that included the open enrollment period described in subsection (d) of this section shows the facility staffed below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision docu-
ments and the facility will be limited to the level supported by the report for the remainder of the rate year.

(E) At no time will a facility be allowed to enroll in the enhancement program at a level higher than its current level of enrollment plus three additional levels unless otherwise instructed by HHSC Rate Analysis.

(2) New owners after a change of ownership. Enhancement levels for a new owner after a change of ownership will be determined in accordance with subsection (y) of this section. A new owner will not be subject to enrollment limitations based upon the prior owner's performance. This exemption from enrollment limitations does not apply in cases where HHSC or its designee has approved a successor-liability-agreement that transfers responsibility from the former owner to the new owner.

(3) New facilities. A new facility's enrollment will be determined in accordance with subsection (e) of this section.

(j) Determination of staffing requirements for participants. Facilities choosing to participate in the enhanced direct care staff rate agree to maintain certain direct care staffing levels above the minimum staffing levels described in paragraph (1) of this subsection. In order to permit facilities the flexibility to substitute RN, LVN and aide (Medication Aide and nurse aide) staff resources and, at the same time, comply with an overall nursing staff requirement, total nursing staff requirements are expressed in terms of LVN equivalent minutes. Conversion factors to convert RN and aide minutes into LVN equivalent minutes are based upon most recently available, reliable relative compensation levels for the different staff types.

(1) Minimum staffing levels. HHSC determines, for each participating facility, minimum LVN equivalent staffing levels as follows.

(A) Determine minimum required LVN equivalent minutes per resident day of service for various types of residents using time study data, cost report information, and other appropriate data sources.

(i) Determine LVN equivalent minutes associated with Medicare residents based on the data sources from this subparagraph adjusted for estimated acuity differences between Medicare and Medicaid residents.

(ii) Determine minimum required LVN equivalent minutes per resident day of service associated with each Resource Utilization Group (RUG-III) case mix group and additional minimum required minutes for Medicaid residents reimbursed under the RUG-III system who also qualify for supplemental reimbursement for ventilator care or pediatric tracheostomy care as described in §355.307 of this title (relating to Reimbursement Setting Methodology) based on the data sources from this subparagraph adjusted for acuity differences between Medicare and Medicaid residents and other factors.

(B) Based on most recently available, reliable utilization data, determine for each facility the total days of service by RUG-III group, days of service provided to Medicaid residents qualifying for Medicaid supplemental reimbursement for ventilator or tracheostomy care, total days of service for Medicare Part A residents in Medicaid-contracted beds, and total days of service for all other residents in Medicaid-contracted beds.

(C) Multiply the minimum required LVN equivalent minutes for each RUG-III group and supplemental reimbursement group from subparagraph (A) of this paragraph by the facility's Medicaid days of service in each RUG-III group and supplemental reimbursement group from subparagraph (B) of this paragraph and sum the products.

(D) Multiply the minimum required LVN equivalent minutes for Medicare residents by the facility's Medicare Part A days of service in Medicaid-contracted beds.

(E) Divide the sum from subparagraph (C) of this paragraph by the facility's total Medicaid days of service, with a day of service for a Medicaid RUG-III recipient who also qualifies for a supplemental reimbursement counted as one day of service, compare this result to the minimum required LVN-equivalent minutes for a RUG-III PD1 and multiply the lower of the two figures by the facility's other resident days of service in Medicaid-contracted beds.

(F) Sum the results of subparagraphs (C), (D) and (E) of this paragraph, divide the sum by the facility's total days of service in Medicaid-contracted beds, with a day of service for a Medicaid recipient who also qualifies for a supplemental reimbursement counted as one day of service. The results of these calculations are the minimum LVN equivalent minutes per resident day a participating facility must provide.

(G) In cases where the minimum required LVN-equivalent minutes per resident day of service associated with a RUG-III case mix group or supplemental reimbursement group change during the reporting period, the minimum required LVN-equivalent minutes for the RUG-III case mix group or supplemental reimbursement group for the reporting period will be equal to the weighted average LVN-equivalent minutes in effect during the reporting period for that group calculated as follows:

(i) Multiply the first minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first minimum required LVN equivalent minutes were in effect.

(ii) Multiply the second minimum required LVN equivalent minutes per resident day of service associated with the RUG-III case mix group or supplemental reimbursement group in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second minimum required LVN equivalent minutes were in effect.

(iii) Sum the products from clauses (i) and (ii) of this subparagraph.

(iv) Divide the sum from clause (iii) of this subparagraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in clauses (i) and (ii) of this subparagraph.

(2) Enhanced staffing levels. Facilities desiring to participate in the enhanced direct care staff rate are required to staff above the minimum requirements from paragraph (1) of this subsection. These facilities may request LVN-equivalent staffing enhancements from an array of LVN-equivalent enhanced staffing options and associated add-on payments during open enrollment under subsection (d) of this section.

(3) Granting of staffing enhancements. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (i) of this section, into two groups: pre-existing enhancements that facilities request to carry over from the prior year and newly-requested enhancements. Newly-requested enhancements may be enhancements requested by facilities that were nonparticipants in the prior year or by facilities that were participants in the prior year desiring to be granted additional enhancements. Using the process described herein, HHSC first determines the distribution of carry-over enhancements. If HHSC determines that funds are not available to
carry over some or all pre-existing enhancements, facilities will be notified as per subsection (ee) of this section. If funds are available after the distribution of carry-over enhancements, HHSC then determines the distribution of newly requested enhancements. HHSC may not distribute newly requested enhancements to facilities owing funds identified for recoupment from subsections (n) and/or (o) of this section.

(A) HHSC determines projected Medicaid units of service for facilities requesting each enhancement option, and multiplies this number by the rate add-on associated with that enhancement option as determined in subsection (l) of this section.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to available funds.

(i) If the product is less than or equal to available funds, all requested enhancements are granted.

(ii) If the product is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing staffing levels and staffing needs, HHSC may grant certain enhancement options priority for distribution.

(4) Notification of granting of enhancements. Participating facilities are notified, in a manner determined by HHSC, as to the disposition of their request for staffing enhancements.

(5) In cases where more than one enhanced staffing level is in effect during the reporting period, the staffing requirement will be based on the weighted average enhanced staffing level in effect during the reporting period calculated as follows:

(A) Multiply the first enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the first enhanced staffing level was in effect.

(B) Multiply the second enhanced staffing level in effect during the reporting period by the most recently available, reliable Medicaid days of service utilization data for the time period the second enhanced staffing level was in effect.

(C) Sum the products from subparagraphs (A) and (B) of this paragraph.

(D) Divide the sum from subparagraph (C) of this paragraph by the sum of the most recently available, reliable Medicaid days of service utilization data for the entire reporting period used in subparagraphs (A) and (B) of this paragraph.

(k) Determination of direct care staff base rate.

(1) Determine the sum of recipient care costs from the direct care staff cost center in subsection (a) of this section in all nursing facilities included in the Texas Nursing Facility Cost Report database used to determine the nursing facility rates in effect on January 1, 2000 (hereinafter referred to as the initial database).

(2) Adjust the sum from paragraph (1) of this subsection as specified in §355.108 of this title (relating to Determination of Inflation Indices) to inflate the costs to the prospective rate year.

(3) Divide the result from paragraph (2) of this subsection by the sum of recipient days of service in all facilities in the initial database and multiply the result by 1.07. The result is the average direct care staff base rate component for all facilities.

(4) For rates effective September 1, 2009 and thereafter, to calculate the direct care staff per diem base rate component for all facilities for each of the RUG-III case mix groups and for the default groups, divide each RUG-III index from §355.307(b)(3)(C) of this title (relating to Reimbursement Methodology) by 0.9908, which is the weighted average Texas Index for Level of Effort (TILE) case mix index associated with the initial database, and then multiply each of the resulting quotients by the average direct care staff base rate component from paragraph (3) of this subsection.

(5) The direct care staff per diem base rates will remain constant except for adjustments for inflation from paragraph (2) of this subsection. HHSC may also recommend adjustments to the rates in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(i) Determine each participating facility’s total direct care staff rate. Each participating facility’s total direct care staff rate will be equal to the direct care staff base rate from subsection (k) of this section plus any add-on payments associated with enhanced staffing levels selected by and awarded to the facility during open enrollment. HHSC will determine a per diem add-on payment for each enhanced staffing level taking into consideration the most recently available, reliable data relating to LVN equivalent compensation levels.

(m) Staffing requirements for participating facilities. Each participating facility will be required to maintain adjusted LVN-equivalent minutes equal to those determined in subsection (j) of this section. Each participating facility’s adjusted LVN-equivalent minutes maintained during the reporting period will be determined as follows.

(1) Determine unadjusted LVN-equivalent minutes maintained. Upon receipt of the staffing and spending information described in subsection (f) of this section, HHSC will determine the unadjusted LVN-equivalent minutes maintained by each facility during the reporting period.

(2) Determine adjusted LVN-equivalent minutes maintained. Compare the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection to the LVN-equivalent minutes required of the facility as determined in subsection (j) of this section. The adjusted LVN-equivalent minutes are determined as follows:

(A) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is greater than or equal to the number of LVN-equivalent minutes required for the facility or less than the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section; the facility’s adjusted LVN-equivalent minutes maintained is equal to its unadjusted LVN-equivalent minutes; or

(B) If the number of unadjusted LVN-equivalent minutes maintained by the facility during the reporting period is less than the number of LVN-equivalent minutes required of the facility, but greater than or equal to the minimum LVN-equivalent minutes required for participation as determined in subsection (j)(1) of this section, the following steps are performed.

(i) Determine what the facility’s accrued Medicaid fee-for-service direct care revenue for the reporting period would have been if their staffing requirement had been set at a level consistent with the highest LVN-equivalent minutes that the facility actually maintained, as defined in subsection (j) of this section.

(ii) Determine the facility’s adjusted accrued direct care revenue by multiplying the accrued direct care revenue from clause (i) of this subparagraph by 0.85.
(iii) Determine the facility's accrued allowable Medicaid fee-for-service direct care staff expenses for the rate year.

(iv) Determine the facility's direct care spending surplus for the reporting period by subtracting the facility's adjusted accrued direct care revenue from clause (ii) of this subparagraph from the facility's accrued allowable direct care expenses from clause (iii) of this subparagraph.

(v) If the facility's direct care spending surplus from clause (iv) of this subparagraph is less than or equal to zero, the facility's adjusted LVN-equivalent minutes maintained is equal to the unadjusted LVN-equivalent minutes maintained as calculated in paragraph (1) of this subsection.

(vi) If the facility's direct care spending surplus from clause (iv) of this subparagraph is greater than zero, the adjusted LVN-equivalent minutes maintained by the facility during the reporting period is set equal to the facility's direct care spending surplus from clause (iv) of this subparagraph divided by the per diem enhancement add-on as determined in subsection (i) of this section plus the unadjusted LVN-equivalent minutes maintained by the facility during the reporting period from paragraph (1) of this subsection according to the following formula: (Direct Care Spending Surplus/Per Diem Enhancement Add-on for One LVN-equivalent Minute) + Unadjusted LVN-equivalent Minutes.

(C) For adjusted LVN-equivalent minutes calculated on or after March 1, 2004, requirements relating to the minimum LVN-equivalent minutes required for participation in subparagraphs (A) and (B) of this paragraph do not apply.

(n) Staffing accountability. Participating facilities will be responsible for maintaining the staffing levels determined in subsection (j) of this section. HHSC will determine the adjusted LVN-equivalent minutes maintained by each facility during the reporting period by the method described in subsection (m) of this section. HHSC or its designee will recoup all direct care staff revenues associated with unmet staffing goals from participating facilities that fail to meet their staffing requirements during the reporting period.

(o) Spending requirements for participants. Participating facilities are subject to a direct care staff spending requirement with recoupment calculated as follows:

(1) At the end of the rate year, a spending floor will be calculated by multiplying accrued Medicaid fee-for-service direct care staff revenues (net of revenues recouped by HHSC or its designee due to the failure of the facility to meet a staffing requirement as per subsection (n) of this section) by 0.85.

(2) Accrued allowable Medicaid direct care staff fee-for-service expenses for the rate year will be compared to the spending floor from paragraph (1) of this subsection. HHSC or its designee will recoup the difference between the spending floor and accrued allowable Medicaid direct care staff fee-for-service expenses from facilities whose Medicaid direct care staff spending is less than their spending floor.

(3) At no time will a participating facility's direct care rates after spending recoupment be less than the direct care base rates.

(p) Dietary and Fixed Capital Mitigation. Recoupment of funds described in subsection (o) of this section may be mitigated by high dietary and/or fixed capital expenses as follows.

(1) Calculate dietary cost deficit. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If costs are greater than revenues, the dietary per diem cost deficit will be equal to the difference between accrued, allowable Medicaid dietary per diem costs and accrued Medicaid dietary per diem revenues. If costs are less than revenues, the dietary cost deficit will be equal to zero.

(2) Calculate dietary revenue surplus. At the end of the facility's rate year, accrued Medicaid dietary per diem revenues will be compared to accrued, allowable Medicaid dietary per diem costs. If revenues are greater than costs, the dietary per diem revenue surplus will be equal to the difference between accrued Medicaid dietary per diem revenues and accrued, allowable Medicaid dietary per diem costs. If revenues are less than costs, the dietary revenue surplus will be equal to zero.

(3) Calculate fixed capital cost deficit. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title (relating to Cost Finding Methodology). If costs are greater than revenues, the fixed capital cost per diem deficit will be equal to the difference between accrued, allowable Medicaid fixed capital per diem costs and accrued Medicaid fixed capital per diem revenues. If costs are less than revenues, the fixed capital cost deficit will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(4) Calculate fixed capital revenue surplus. At the end of the facility's rate year, accrued Medicaid fixed capital per diem revenues will be compared to accrued, allowable Medicaid fixed capital per diem costs as defined in §355.306(b)(2)(A) of this title (relating to Cost Finding Methodology). If revenues are greater than costs, the fixed capital revenue per diem surplus will be equal to the difference between accrued Medicaid fixed capital per diem revenues and accrued, allowable Medicaid fixed capital per diem costs. If revenues are less than costs, the fixed capital revenue surplus will be equal to zero. For purposes of this paragraph, fixed capital per diem costs of facilities with occupancy rates below 85% are adjusted to the cost per diem the facility would have accrued had it maintained an 85% occupancy rate throughout the rate year.

(5) Facilities with a dietary per diem cost deficit will have their dietary per diem cost deficit reduced by their fixed capital per diem revenue surplus, if any. Any remaining dietary per diem cost deficit will be capped at $2.00 per diem.

(6) Facilities with a fixed capital per diem deficit will have their fixed capital per diem deficit reduced by their dietary revenue per diem surplus, if any. Any remaining fixed capital per diem cost deficit will be capped at $2.00 per diem.

(7) Each facility's recoupment, as calculated in subsection (o) of this section, will be reduced by the sum of that facility's dietary per diem cost deficit as calculated in paragraph (5) of this subsection and its fixed capital per diem cost deficit as calculated in paragraph (6) of this subsection.

(q) Adjusting staffing requirements. Facilities that determine that they will not be able to meet their staffing requirements from subsection (m) of this section may request a reduction in their staffing requirements and associated rate add-on. These requests will be effective on the first day of the month following approval of the request.

(r) Voluntary withdrawal. Facilities wishing to withdraw from participation must notify HHSC in writing by certified mail and the request must be signed by an authorized representative as designated per the DADS signature authority designation form applicable to the provider's contract or ownership type. Facilities voluntarily withdraw-
ing must remain nonparticipants for the remainder of the rate year. Facilities that voluntarily withdraw from participation will have their participation end effective on the date of the withdrawal, as determined by HHSC.

(s) Notification of recoupment based on Annual Staffing and Compensation Report or cost report. Facilities will be notified, in a manner specified by HHSC, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC or its designee. If a subsequent review by HHSC or audit results in adjustments to the Annual Staffing and Compensation Report or cost report as described in subsection (f) of this section that changes the amount to be repaid to HHSC or its designee, the facility will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC or its designee will recoup any amount owed from a facility's vendor payment(s) following the date of the notification letter. Providers notified of a recoupment based on an Annual Staffing and Compensation Report described in subsection (f)(2)(A) or (f)(2)(F) of this section may request that HHSC recalculate their recoupment after combining the Annual Staffing and Compensation Report with the provider's next cost report or Staffing and Compensation Report, as appropriate. The request must be in writing and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special mail delivery no later than 30 days after the date on the written notification of recoupment. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. The written request must be signed by an individual legally responsible for the conduct of the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable signature authority designation form for the provider at the time of the request, or a legal representative for the provider. The administrator or director of a facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. HHSC will not accept a request that is not signed by an individual responsible for the conduct of the provider.

(t) Change of ownership and contract terminations. Facilities required to submit a Staffing and Compensation Report due to a change of ownership or contract termination as described in subsection (f) of this section will have funds held as per 40 TAC §19.2308 (relating to Change of Ownership) until an acceptable Staffing and Compensation Report is received by HHSC and funds identified for recoupment from subsections (n) and/or (o) of this section are repaid to HHSC or its designee. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee will recoup any amount owed from the facility's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from subsection (x) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC or its designees until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (s) of this section prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(u) Failure to document staff time and spending. Undocumented direct care staff and contract labor time and compensation costs will be disallowed and will not be used in the determination of direct care staff time and costs per unit of service.

(v) All other rate components. All other rate components will be calculated as specified in §355.307 of this title (relating to Reimbursement Setting Methodology) and will be uniform for all providers.

(w) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110(a)(3) of this title (relating to Informal Reviews and Formal Appeals).

(x) Responsible entities. The contracted provider, owner, or legal entity that received the revenue to be recouped upon is responsible for the repayment of any recoupment amount.

(y) Change of ownership. Participation in the enhanced direct care staff rate confers to the new owner as defined in 40 TAC §19.2308 (relating to Change of Ownership) when there is a change of ownership. The new owner is responsible for the reporting requirements in subsection (f) of this section for any reporting period days occurring after the change. If the change of ownership occurs during an open enrollment period as defined in subsection (c) of this section, then the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the facility in accordance with subsection (d) of this section.

(z) Contract cancellations. If a facility's Medicaid contract is cancelled before the first day of an open enrollment period as defined in subsection (c) of this section and the facility is not granted a new contract until after the last day of the open enrollment period, participation in the enhanced direct care staff rate as it existed prior to the date when the facility's contract was cancelled will be reinstated when the facility is granted a new contract, if it remains under the same ownership, subject to the availability of funding. Any enrollment limitations from subsection (i) of this section that would have applied to the cancelled contract will apply to the new contract.

(aa) Determination of compliance with spending requirements in the aggregate.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Commonly owned corporations--two or more corporations where five or fewer identical persons are individuals, estates, or trusts control greater than 50 percent of the total voting power in each corporation.

(B) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(C) Combined entity--one or more commonly owned corporations and one or more limited partnerships where the general partner is controlled by the same person(s) as the commonly owned corporation(s).

(D) Control--greater than 50 percent ownership by the entity.

(2) Aggregation. For an entity, commonly owned corporation, or combined entity that controls more than one participating nursing facility contract, compliance with the spending requirements detailed in subsection (o) of this section can be determined in the aggregate for all participating nursing facility contracts controlled by the entity, commonly owned corporations, or combined entity at the end of the rate year; the effective date of the change of ownership of its last participating NF contract, or the effective date of the termination of its last participating NF contract rather than requiring each contract to meet its spending requirement individually. Corporations that do not
meet the definitions under paragraph (1)(A) - (C) of this subsection are not eligible for aggregation to meet spending requirements.

(A) Aggregation Request. To exercise aggregation, the entity, combined entity, or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each Staffing and Compensation Report or cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, the single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(B) Frequency of Aggregation Requests. The entity, combined entity, or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(C) Ownership changes or terminations. Nursing facility contracts that change ownership or terminate effective at the end of the applicable reporting period, or prior to the determination of compliance with spending requirements as per subsection (o) of this section, are excluded from all aggregate spending calculations. These contracts’ compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(bb) Medicaid Swing Bed Program for Rural Hospitals. When a rural hospital participating in the Medicaid swing bed program furnishes NF nursing care to a Medicaid recipient under 40 TAC §19.2326 (relating to Medicaid Swing Bed Program for Rural Hospitals), HHSC or its designee makes payment to the hospital using the same procedures, the same case-mix methodology, and the same RUG-III rates that HHSC authorizes for reimbursing NFs receiving the direct care staff base rate with no enhancement levels. These hospitals are not subject to the staffing and spending requirements detailed in this section.

(cc) Reinvestment. For services delivered on or before August 31, 2009, HHSC will reinvest recouped funds in the enhanced direct care staff rate program, to the extent that there are qualifying facilities. For services delivered beginning September 1, 2009, and thereafter, HHSC will not reinvest recouped enhanced direct care staff rate funds.

(1) Identify qualifying facilities. Facilities meeting the following criteria during the most recent completed reporting period are qualifying facilities for reinvestment purposes.

(A) The facility was a participant in the enhanced direct care staff rate program, for state fiscal years 2004 and 2005 only, had been a participant at level 0 in state fiscal year 2003 and was reclassified as a nonparticipant due to the elimination of level 0 in state fiscal year 2004.

(B) The facility's unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section were greater than the number of LVN-minutes required of the facility as determined in subsection (j) of this section.

(C) The facility met its spending requirement as determined in subsection (o) of this section.

(D) An acceptable Annual Staffing and Compensation Report for the reporting period was received by HHSC Rate Analysis at least 30 days prior to the date distribution of available reinvestment funds was determined.

(E) The Medicaid contract that was in effect for the facility during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined or, in cases where a change of ownership has occurred, HHSC or its designee has approved a Successor Liability Agreement between the contract in effect during the reinvestment reporting period and the contract in effect when reinvestment is determined.

(2) Distribution of available reinvestment funds. Available funds are distributed as described below.

(A) HHSC determines units of service provided during the most recent completed reporting period by each qualifying facility achieving, with unadjusted LVN-equivalent minutes as determined in subsection (m)(1) of this section, each enhancement option above the enhancement option awarded to the facility during the reporting period and multiplies this number by the rate add-on associated with that enhancement in effect during the reporting period.

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all achieved enhancements for qualifying facilities are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until achieved enhancements are granted within available funds.

(3) All retroactive enhancements are subject to spending requirements detailed in subsection (o) of this section. Revenue from retroactive enhancements is not eligible for mitigation of spending recoupment as described in subsection (p) of this section.

(4) Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(5) Notification of reinvested enhancements. Qualifying facilities are notified in a manner determined by HHSC, as to the award of reinvested enhancements.

(dd) Disclaimer. Nothing in these rules should be construed as preventing facilities from adding direct care staff in addition to those funded by the enhanced direct care staff rate.

(ee) Notification of lack of available funds. If HHSC determines that funds are not available to continue participation for facilities from which it has not received an acceptable request to modify their enrollment by the last day of an enrollment period as per subsection (d) of this section or to fund carry-over enhancements as per subsection (j)(3) of this section, HHSC will notify providers in a manner determined by HHSC that such funds are not available.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.
TRD-201204136
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 424-6900

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.503. Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, providers are reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner:

(1) Unit of service reimbursement. Reimbursement for personal assistance services and in-home respite care services, and cost per unit of service for nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, [and] speech/language therapy, and day activity and health services will be determined on a fee-for-service basis in the following manner:

   (A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

   (B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

   (C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

   (D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA)

or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

   (E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

   (F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider cost report for each service. The allowable cost per unit of service, for each contracted provider cost report is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

   (G) For personal assistance services, two cost areas are created:

      (i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

      (ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A) - (E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider cost report for the other attendant cost area. The allowable cost per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

      (iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

   (2) Per day reimbursement.

      (A) The reimbursement for Adult Foster Care (AFC) and out-of-home respite care in an AFC home will be determined as a per day reimbursement using a method based on modeled projected expenses, which are developed using data from surveys, cost report data from other similar programs, consultation with other service providers or professionals experienced in delivering contracted services, and other sources. The room and board payments for AFC Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

      (B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care).

      (i) The per day reimbursement for attendant care for each of the six levels of care will be determined based upon client need for attendant care.

      (ii) A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments.
(iii) The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance.

(iv) The reimbursement for out-of-home respite in an AL/RC facility is determined using the same methodology as the reimbursement for AL/RC except that the out-of-home respite rates:

(I) are set at the rate for providers who choose not to participate in the attendant compensation rate enhancement; and

(II) include room and board costs equal to the client's SSI, less a personal needs allowance.

(v) When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC and out-of-home respite provided in an AL/RC facility will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Nursing Facility case mix class into which the CBA participant is classified.

(D) The reimbursement for Personal Care [44] will be composed of two rate components, one for the direct care cost center and one for the non-direct care cost center.

(i) Direct care costs. The rate component for the direct care cost center will be determined by modeling the cost of the minimum required staffing for the Personal Care [44] setting, as specified by the Department of Aging and Disability Services, and using staff costs and other statistics from the most recently audited cost reports from providers delivering similar care.

(ii) Non-direct care costs. The rate component for the non-direct care cost center will be equal to the non-attendant portion of the non-apartment assisted living rate per day for non-participants in the Attendant Compensation Rate Enhancement. Providers receiving the Personal Care [44] rate are not eligible to participate in the Attendant Compensation Rate Enhancement and receive direct care add-on's to the Personal Care [44] rates.

(3) Emergency Response Services. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with §355.510 of this title (relating to Reimbursement Methodology for Emergency Response Services (ERS)).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for CBA participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, and minor home modifications. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Home-Delivered Meals. The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with §355.511 of this title (relating to Reimbursement Methodology for Home-Delivered Meals).

(7) Day activity and health services. The unit of service reimbursement for day activity and health services is determined in accordance with §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services).

(8) [22] Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(e) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider [all contracted providers] must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title. [The number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.]
and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(4) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

[(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.]

(5) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

§355.505. Reimbursement Methodology for the Community Living Assistance and Support Services Waiver Program.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). Providers are reimbursed for waiver services provided to Medicaid-enrolled persons with related conditions. Additionally, providers will be reimbursed a one-time administrative expense fee for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant.

(b) Reporting of cost.

(1) Providers must follow the cost reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Number of cost reports to be submitted. All legal entities must submit a cost report unless the number of days between the date the legal entity's first Texas Department of Aging and Disability Services (DADS) client received services and the legal entity's fiscal year end is 30 days or fewer.

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in
the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(1) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(3) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title. [A provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by HHSC Rate Analysis before the due date of the cost report.]

(c) Waiver reimbursement determination methodology.

(1) Unit of service reimbursement or reimbursement ceiling by unit of service. Reimbursement or reimbursement ceilings for related-condition waiver services, habilitation, nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, supported employment, day activity and health services, and in-home and out-of-home respite care services will be determined on a fee-for-service basis. These services are provided under §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(2) Monthly reimbursement. The reimbursement for case management waiver service will be determined as a monthly reimbursement. This service is provided under the §1915(c) of the Social Security Act Medicaid waiver for persons with related conditions.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(c) of this paragraph.

(4) Reimbursement determination. Recommended unit of service reimbursements and reimbursement ceilings by unit of service are determined in the following manner:

(A) Unit of service reimbursement for habilitation, and cost per unit of service for nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, behavioral support services, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, supported employment, and in-home and out-of-home respite care are determined in the following manner:

(i) The total allowable cost for each contracted provider cost report will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) The total allowable cost is reduced by the amount of the administrative expense fee and requisition fee revenues accrued for the reporting period.

(iii) Each provider's total allowable cost, excluding depreciation and mortgage interest, is projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(vi) Each provider's projected total allowable cost is divided by the number of units of service to determine the projected cost per unit of service.

(vii) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech/language therapy, in-home respite care, behavioral support services, auditory integration training/auditory enhancement training (audiology services), nutritional services, employment assistance, and supported employment, the projected cost per unit of service, for each provider is multiplied by 1.044. This adjusted allowable cost per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(viii) For habilitation services two cost areas are created:

(I) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(II) Another attendant cost area is created which includes the other habilitation services costs not included in subclause (I) of this clause, as determined in clauses (i)-(v) of this subparagraph to create an other attendant cost area. An allowable cost per unit of service is calculated for the other habilitation cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed
and weighted by the number of units of service, and the median cost per unit of service is calculated. The median cost per unit of service is multiplied by 1.044.

(III) The attendant cost area and the other attendant cost area are summed to determine the habilitation attendant cost per unit of service.

(ix) For out-of-home respite care, the allowable costs per unit of service are calculated as determined in clauses (i) - (vi) of this subparagraph. The allowable costs per unit of service for each contracted provider cost report are multiplied by 1.044. The costs per unit of service are then arrayed and weighted by the number of units of service, and the median cost per unit of service is calculated.

(B) The monthly reimbursement for case management services is determined in the following manner:

(i) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report and other pertinent cost survey information.

(ii) Total allowable costs are reduced by the amount of administrative expense fee revenues reported.

(iii) Each provider's total allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices).

(iv) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Medicare contributions, Workers' compensation insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(v) Each provider's projected total allowable costs are divided by the number of monthly units of service to determine the projected cost per client month of service.

(vi) Each provider's projected cost per client month of service is arrayed from low to high and weighted by the number of units of service and the median cost per client month of service is calculated.

(vii) The median projected cost per client month of service is multiplied by 1.044.

(C) The unit of service reimbursement for day activity and health services is determined in accordance with §355.6907 (Relating to Reimbursement Methodology for Day Activity and Health Services).

(D) HHSC also adjusts reimbursement according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs) if new legislation, regulations, or economic factors affect costs.

(5) The reimbursement for support family services and continued family services will be determined as a per day rate using a method based on modeled costs which are developed by using data from surveys, cost report data from other similar programs, payment rates from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services, or other sources as determined appropriate by HHSC. The per day rate will have two parts, one part for the child placing agency and one part for the support family.

(d) Administrative expense fee determination methodology.

(1) One-time administrative expense fee. Reimbursement for the pre-enrollment assessment and care planning process required to determine eligibility for the waiver program will be provided as a one-time administrative expense fee.

(2) Administrative expense fee determination process. The recommended administrative expense fee is determined using a method based on modeled projected expenses which are developed using data from surveys, cost report data from other similar programs or services, professionals' experience in delivering similar services, and other relevant sources.

(e) Requisition fees. Requisition fees are reimbursements paid to the CLASS direct service agency contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, specialized therapies, and minor home modifications for CLASS participants. Reimbursement for requisition fees for adaptive aids, medical supplies, dental services, specialized therapies, and minor home modifications will vary based on the actual cost of the adaptive aids, medical supplies, dental services, specialized therapies, and minor home modifications. Reimbursements are determined using a method based on modeled projected expenses which are developed using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(f) Allowable and unallowable costs.

(1) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs) as well as the following provisions.

(2) Participant room and board expenses are not allowable, except for those related to respite care.

(3) The actual cost of adaptive aids, medical supplies, dental services, and home modifications is not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(h) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(i) Reviews and field audits of cost reports. Desk reviews or field audits are performed on all contracted providers' cost reports. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).
(j) Reporting requirements. The program director’s full salary is to be reported on the line item of the cost report designated for the director.

§355.507. Reimbursement Methodology for the Medically Dependent Children Program.

(a) The Texas Health and Human Services Commission (HHSC) determines payment rates for qualified contracted providers for the provision of services in the Medically Dependent Children Program (MDCP). HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) The rates for nursing services provided by a registered nurse (RN) or licensed vocational nurse (LVN) will be determined in accordance with §355.502 of this title (Relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

(c) The rates for personal assistance services (PAS) without delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and §355.112(l) of this title (relating to Attendant Compensation Rate Enhancement). The rates for PAS with delegation of the service by an RN will be based upon the Community-Based Alternatives (CBA) approved rates for PAS in accordance with §355.503 of this title (relating to Reimbursement Methodology for the Community-Based Alternatives Waiver Program) and the add-on payment for the highest level of attendant compensation rate enhancement in accordance with §355.112(m) of this title (relating to Attendant Compensation Rate Enhancement).

(d) The rate ceiling for camp services will be equivalent to the Community Living Assistance and Support Services direct service agency (CLASS DSA) out-of-home respite rate. Actual payments for this service will be the lesser of the rate ceiling or the actual cost of the camp.

(e) Facility-based respite care rates are determined on a 24-hour basis. The rates for facility-based respite care are calculated at 77 percent of the daily nursing facility base rates by level of care. The base rates used in this calculation do not include nursing facility rate add-ons.

(f) The unit of service reimbursement for day activity and health services is determined in accordance with §355.6907 of this title (relating to Reimbursement Methodology for Day Activity and Health Services).

(g) [§4] The following sections of this title will apply to cost reports or surveys required to obtain the necessary information to determine new payment rates: §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures), §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), §355.107 of this title (relating to Notification of Exclusions and Adjustments), §355.108 of this title (relating to Determination of Inflation Indices), §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs), §355.110 of this title (relating to Informal Reviews and Formal Appeals), and §355.111 of this title (relating to Administrative Contract Violations).

§355.509. Reimbursement Methodology for Residential Care.

(a) General requirements. The Texas Health and Human Services Commission (HHSC), or its designee, applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Cost reporting.

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title: [All contracted providers must submit a cost report unless the number of days between the date the first client received services and the provider’s fiscal year end is 30 days or fewer.]

(3) The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider’s custody by any regulatory agency. A Residential Care provider may also be excused from submitting a cost report if the provider’s total number of Residential Care billable days of service is 366 or fewer in the provider’s fiscal year. Requests to be excused from submitting a cost report may be received by the Texas Health and Human Services Commission’s (HHSC) Rate Analysis department before the due date of the cost report.

(c) Reimbursement determination.

(1) Reporting and verification of allowable costs.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC or its designee excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and that are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(2) Residential care reimbursement. Recommended per diem reimbursement for residential care is determined as follows.

(A) Reported allowable expenses are combined into four cost areas:

(i) attendant;

(ii) other direct care;

(iii) facility; and

(iv) administration and transportation.
(B) Facility, transportation (vehicle), and administration expenses are lowered to reflect expenses for a provider at the lower of:

(i) 85% occupancy rate; or

(ii) the overall average occupancy rate for licensed beds in facilities included in the database during the cost-reporting periods included in the base. The occupancy adjustment is applied if the provider's occupancy rate is below 85% or the overall average, whichever is lower. The occupancy adjustment is determined by the individual provider occupancy rate being divided by .85 or the average occupancy rate of all providers in the database.

(C) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes and employee benefits are Federal Insurance Contributions Act or Social Security, Medicare contributions, Workers' Compensation Insurance, the Federal Unemployment Tax Act, and the Texas Unemployment Compensation Act.

[D] Allowable salaries paid to the director, administrator, assistant administrator, owner, or partner who works for the Residential Care contractor may be limited to the 90th percentile of an array of salary costs for the director, administrator, assistant administrator, owner, or partner.

[D] The attendant cost area from subparagraph (A)(ii) of this paragraph will be calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

[E] The following applies to the cost areas from subparagraph (A)(ii) - (iv) of this paragraph:

(i) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(ii) Cost area per diem expenses are calculated by dividing total reported allowable costs for each cost area by the total days of service. Cost area per diem expenses are rank ordered from low to high to produce projected per diem expense arrays.

(iii) Reimbursement is determined by selecting from each cost area the median day of service and the corresponding per diem expense times 1.07. The resulting cost area amounts are totaled to determine the per diem reimbursement.

(iv) The client is required to pay for their room and board portion of the per diem reimbursement. DADS will pay the services portion of the per diem reimbursement. The room and board payments will be paid to providers by clients from the client's Supplemental Security Income (SSI). When SSI is increased or decreased by the Federal Social Security Administration, the per diem reimbursement will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(3) Exceptions to the reimbursement determination methodology. Reimbursement may be adjusted in accordance with §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs) when new legislation, regulations, or economic factors affect costs.

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(e) Allowable and unallowable costs. In determining whether a cost is allowable or unallowable, providers must follow the guidelines as specified in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs). In addition to these sections, the following allowable and unallowable costs are applicable in the Community Care for Aged and Disabled Residential Care program.

(1) Allowable costs. Medical supplies required to provide residential care services are allowable. Allowable medical costs include supply costs associated with the administration of medications, such as medication cups, syringes for insulin injections, stethoscopes, blood pressure cuffs, and thermometers.

(2) Unallowable costs. Unallowable costs include prescription drugs; non-legend drugs; medical records costs; and compensation for physicians, pharmacists, and medical directors.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports of all contracted providers. The frequency and nature of the field audit are determined by HHSC or its designee to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal reviews and Formal Appeals).


(a) General requirements. The Texas Health and Human Services Commission (HHSC) or its designee applies the general principles of cost determination as specified in §355.101 of this title (relating to Determination of Inflation Indices). The term "HHSC" occurs, it means the Texas Health and Human Services Commission or its designee.

(b) General reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(c) Reimbursement ceiling determination. When HHSC does not require a cost report, HHSC may adjust the rate ceiling as appropriate based upon cost data collected in the form of special surveys or reports submitted by all contracted providers, or other appropriate cost data related to the Emergency Response Services program.

(d) Reimbursement ceiling determination based on a cost-reporting process. If HHSC deems it appropriate to require cost reporting, cost reports will be governed by the information in this subsection.

(1) Reimbursement ceiling. The reimbursement ceiling is determined for a per-month unit of service. The ceiling applies to all provider agencies uniformly, regardless of geographic location or other factors.

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider [All contracted providers] must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title. [the number of days between the date]
the first Texas Department of Aging and Disability Services (DADS) client received services and the provider’s fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider’s custody by any governmental entity. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Exclusion of cost reports.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the data base reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the data base used for reimbursement determination if:

(i) there is a reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursement is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(ii) of this paragraph.

(4) Recommended reimbursement ceiling. HHSC determines a recommended reimbursement ceiling in the following manner. The reimbursement ceiling is determined by the analysis of financial and statistical data submitted by provider agencies on cost reports and, as deemed appropriate, a market survey analysis of emergency response equipment suppliers.

(A) HHSC allocates payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Workers’ Compensation Insurance (WCI), the Federal Unemployment Tax Act, and Texas Unemployment Compensation Act.

(B) Allowable expenses, excluding depreciation and mortgage interest, are projected from the provider agency’s reporting period to the next ensuing reimbursement period. HHSC determines reasonable and appropriate economic inflators or adjustments as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate a prospective expense. HHSC also adjusts reimbursement if new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(C) Allowable reported expenses are combined into three cost areas: responder, program operations, and facility. To determine the projected cost per unit of service, a contracted provider’s projected expenses in each cost area are divided by its total units of service for the reporting period.

(D) The contracted providers’ projected costs per unit of service are ranked from low to high in each cost area, with corresponding units of service.

(E) The 80th percentile cost, weighted by units of service, is determined for each cost area. The recommended reimbursement ceiling is the sum of the 80th percentile costs of the three cost areas.

(F) The reimbursement determination authority for this reimbursement ceiling is specified in §355.101 of this title (relating to Introduction).

(g) Factors affecting allowable costs. In determining whether a cost is allowable or unallowable, providers must follow the guidelines specified in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs). Providers must follow the guidelines for allowable and unallowable costs as specified in §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs) and follow the guidelines for unallowable costs specific to the ERS program as specified in this subsection.

(h) Unallowable cost. The unallowable cost specific to the ERS program is the expense of base station equipment at the response center.

(i) Reporting revenue. Revenue must be reported on the cost report according to §355.104 of this title (relating to Revenue).


(a) Reimbursement ceiling determination. When the Texas Health and Human Services Commission (HHSC) does not require a cost report, HHSC may adjust the rate ceiling as appropriate, based on cost data collected through the budget worksheets or other appropriate cost data related to the program in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). For the purposes of this section, HHSC means the Texas Health and Human Services Commission or its designee.

(b) Reimbursement ceiling determination based on a cost-reporting process. If HHSC deems it appropriate to require cost reporting, cost reports will be governed by the information in this subsection. HHSC applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction). The cost-reporting process is as follows:
(1) Documentation requirements. Provider agencies must follow the cost-reporting guidelines specified in §355.105 of this title.

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider agency [All contracted provider agencies] must submit a cost report unless the agency meets one or more of the conditions in §355.105(b)(4)(D) of this title.[5]

(A) the number of days between the date the first Texas Department of Aging and Disability Services (DADS) client received services and the provider agency's fiscal year end is 30 days or less; or

(B) a provider agency served an average of fewer than 500 meals a month for the designated cost report period; or

(C) circumstances beyond the control of the provider agency make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider agency's custody by any governmental entity.

(3) Requests to be excused from submitting a cost report. Requests to be excused from submitting a cost report must be received by HHSC Rate Analysis before the due date of the cost report.

(4) [44] Exclusion of cost reports.

(A) Provider agencies are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by provider agencies. The purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

[C] When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(5) [55] Allowable and unallowable costs. Provider agencies must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs). Provider agencies must follow the guidelines for allowable and unallowable costs as specified in §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(6) [66] Revenue. Revenue must be reported on the cost report according to §355.104 of this title (relating to Revenues).

(7) [77] Review of cost reports. HHSC staff perform either desk reviews or field audits on all contracted provider agencies. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and provider agencies will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Provider agencies may request an informal and, if necessary, an administrative hearing to dispute an action taken by HHSC under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Reimbursement ceiling. This subsection applies when a cost report is required. HHSC staff determine the recommended reimbursement ceiling as follows.

(1) HHSC staff allocate payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or social security, Workers’ Compensation Insurance (WC1), Federal Unemployment Tax Act (FUTA), and Texas Unemployment Compensation Act (TUCA).

(2) HHSC staff project allowable expenses, excluding depreciation and mortgage interest, from each provider agency’s reporting period to the next ensuing reimbursement period. HHSC determines reasonable and appropriate economic adjusters as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. HHSC staff also adjust reimbursement if new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(3) HHSC staff combine allowable reported costs into four cost areas.

(A) The administrative cost area includes administrative salaries, wages, and other administrative expenses.

(B) The facility cost area includes building and equipment expenses, and operation and maintenance expenses.

(C) The food preparation cost area includes raw food costs, salaries and wages of food service staff, and subcontracted costs when food preparation is purchased.

(D) The meal delivery cost area includes meal delivery expenses, including mileage paid; meal container expenses; and vehicle rental, lease, use, and/or depreciation costs.

(4) A contracted provider agency’s projected expenses in each cost area are divided by its total units of service for the reporting period to determine the projected cost per unit of service.

(5) The contracted provider agency’s projected costs per unit of service are ranked from low to high in each cost area.

(6) The 80th percentile cost is determined for each cost area. The recommended reimbursement ceiling is the sum of the 80th percentile costs of the four cost areas.

(d) Reimbursement determination authority. The reimbursement determination authority for this reimbursement ceiling is specified in §355.101 of this title.

(e) Contract-specific reimbursement. DADS determines the actual reimbursement for each contract through negotiations between DADS staff and the provider agency. In no instance may the negotiated unit reimbursement exceed the unit reimbursement ceiling.

§355.513. Reimbursement Methodology for the Deaf-Blind with Multiple Disabilities Waiver Program.

(a) General information. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).
Providers are reimbursed for waiver services provided to individuals who are deaf-blind with multiple disabilities.

(b) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to set reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using rates for similar services from other Medicaid programs; data from surveys; cost report data from other similar programs; consultation with other service providers or professionals experienced in delivering contracted services; and other sources.

(c) Waiver rate determination methodology. If HHSC deems it appropriate to require contracted providers to submit a cost report, recommended reimbursements for waiver services will be determined on a fee-for-service basis in the following manner for each of the services provided:

1. Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

2. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

3. Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

4. Allowable administrative and overall facility/operations costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's service units reported to the amount of total waiver service units reported. Service-specific facility and operations costs for out-of-home respite and day habilitation services will be directly charged to the specific waiver service.

5. For nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech/language therapy, behavioral support services, audiology services, dietary services, employment assistance, and supported employment, an allowable cost per unit of service is calculated for each contracted provider cost report in accordance with paragraphs (1) - (4) of this subsection. The allowable costs per unit of service for each contracted provider cost report is multiplied by 1.044. This adjusted allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining rates for these services in accordance with §355.502 of this title (relating to Reimbursement Methodology for Common Services in Home and Community-Based Services Waivers).

6. Requisition fees are reimbursements paid to the Deaf Blind with Multiple Disabilities (DBMD) Waiver contracted providers for their efforts in acquiring adaptive aids, medical supplies, dental services, and minor home modifications for DBMD participants. Reimbursement for adaptive aids, medical supplies, dental services, and minor home modifications will vary based on the actual cost of the adaptive aid, medical supply, dental service, and minor home modification. Reimbursements are determined using a method based on modeled projected expenses, which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers or professionals experienced in delivering contracted services; or other sources.

7. For day habilitation, residential habilitation, chore, and interveners (excluding Interveners I, II and III) services, two cost areas are created:

(A) The attendant cost area, which includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) An "other direct care" cost area, which includes costs for services not included in subparagraph (A) of this paragraph as determined in paragraphs (1) - (4) of this subsection. An allowable cost per unit of service is determined for each contracted provider cost report for the other direct care cost area. The allowable costs per unit of service for each contracted provider cost report are arrayed. The units of service for each contracted provider cost report in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(C) The attendant cost area and the other direct care cost area are summed to determine the cost per unit of service.

8. For Interveners I, II and III, payment rates are developed based on rates determined for other programs that provide similar services. If payment rates are not available from other programs that provide similar services, payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). Interveners I, II and III are not considered attendants for purposes of the Attendant Compensation Rate Enhancement described in §355.112 of this title and providers are not eligible to receive direct care add-ons to the Intervener I, II or III rates.

9. Assisted living services payment rates are determined using a pro forma approach in accordance with §355.105(h) of this title. The rates are adjusted periodically for inflation. The room and board payments for waiver clients receiving assisted living services are covered in the reimbursement for these services and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

10. Pre-enrollment assessment services and case management services payment rates are determined by modeling the salary for a Case Manager staff position. This rate is periodically updated for inflation.

11. The orientation and mobility services payment rate is determined by modeling the salary for an Orientation and Mobility Specialist staff position. This rate is updated periodically for inflation.

12. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title.

(e) Reporting of cost.
(1) Cost-reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(2) Excused from submission of cost reports. If required by HHSC, a contracted provider [all contracted providers] must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title: [the number of days between the date the first Department of Aging and Disabilities Services (DADS) client received services and the provider’s fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider’s custody by any regulatory agency. A DBMD Waiver contracted provider may also be excused from submitting a cost report if the total number of DBMD clients served during the reporting period is three or less. Requests to be excused from submitting a cost report must be received by HHSC’s Rate Analysis Department before the due date of the cost report.]

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost-report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers, in order to ensure the database reflects costs and other information necessary for the provision of services and is consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) Material pertinent to proposed reimbursements and made available to the public shall include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B) of this paragraph.

(4) Allowable and unallowable costs. Providers must follow the guidelines specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs), in determining whether a cost is allowable or unallowable. In addition, providers must adhere to the following principles:

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids, medical supplies, dental services, and minor home modifications is not allowable for cost-reporting purposes. Allowable labor costs associated with acquiring adaptive aids, medical supplies, dental services, and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable. Refer to §355.103(b)(17)(K) of this title.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers.

The frequency and nature of field audits are determined by HHSC staffing to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.5902, §355.6907

Statutory Authority
The amendments are proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission’s duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§355.5902. Reimbursement Methodology for Primary Home Care.

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Cost reporting. Provider agencies must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures).

(1) Number of cost reports to be submitted. Every legal entity [All legal entities] must submit a cost report unless the entity meets one or more of the conditions in §355.105(b)(4)(D) of this title: [the number of days between the date the first Department of Aging and Disabilities Services (DADS) client received services and the legal entity’s fiscal year end is 30 days or fewer. The legal entity may be excused from submitting a cost report if circumstances beyond the control of the legal entity make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the legal entity’s custody by any governmental entity. Requests to be excused from submitting a cost report must be received at the address...]

37 TexReg 6230  August 17, 2012  Texas Register
specify in the letter mailed along with the cost report before the due date of the cost report."

(A) Contracted providers participating in the attendant compensation rate enhancement.

(i) At the same level of enhancement. If all the contracts under the legal entity participate in the enhancement at the same level of enhancement, the contracted provider must submit one cost report for the legal entity.

(ii) At different levels of enhancement. If all the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit one cost report for each level of enhancement.

(B) Contracted providers not participating in the attendant compensation rate enhancement. If all the contracts under the legal entity do not participate in the enhancement, the contracted provider must submit one cost report for the legal entity.

(C) Contractors participating and not participating in attendant compensation rate enhancement.

(i) At the same level of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate at the same level of enhancement, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for the contracts that do participate.

(ii) At different levels of enhancement. If some of the contracts under the legal entity do not participate in the enhancement and the rest of the contracts under the legal entity participate in the enhancement but they participate at more than one enhancement level, the contracted provider must submit:

(I) one cost report for the contracts that do not participate; and

(II) one cost report for each level of enhancement.

(2) Provider agencies are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC excludes from reimbursement determination unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by provider agencies. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(3) Individual cost reports may not be included in the database used for reimbursement determination if:

(A) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(B) an auditor determines that reported costs are not verifiable.

When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (A)(i) of this paragraph.

(c) Reimbursement determination. Reimbursement is determined in the following manner.

(1) Cost determination by cost area. Allowable costs are combined into three cost areas, after allocating payroll taxes to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense and after applying employee benefits directly to the corresponding salary line item.

(A) Service support cost area. This includes field supervisors’ salaries and wages, benefits, and mileage reimbursement expenses. This also includes building, building equipment, and operation and maintenance costs; administration costs; and other service costs. Administration expenses equal to $0.18 per priority unit of service are allocated to priority. The administration costs remaining after this allocation are summed with the other service support costs.

(B) Non-priority attendants cost area. This includes non-priority attendants’ salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(C) Priority attendants cost area. This includes priority attendants’ salaries and wages, benefits, and mileage reimbursement expenses. This cost area is calculated as specified in §355.112 of this title.

(2) Recommended reimbursement by cost area. For the service support cost area described in paragraph (1)(A) of this subsection the following is calculated:

(A) Projected costs. Each contract’s total allowable costs, excluding depreciation and mortgage interest, per unit of service are projected from each contract’s reporting period to the next ensuing reimbursement period, as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. Reimbursement may be adjusted where new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(B) Projected cost per unit of service. To determine the projected cost per unit of service for each contract, the total projected allowable costs for the service support cost area are divided by total units of service, including non-priority services, priority services, and STAR+PLUS services, in order to calculate the projected cost per unit of service.

(C) Projected cost arrays. Each contract’s projected allowable costs per unit of service are ranked ordered from low to high, along with each contract’s corresponding units of service for each cost area.

(D) Recommended reimbursement for the service support cost area. The total units of service for each contract are summed until the median hour of service is reached. The corresponding projected expense is the weighted median cost component. The weighted median cost component is multiplied by 1.044 to calculate the recommended reimbursement for the service support cost area. The service support cost area recommended reimbursement is limited, if necessary, to available appropriations.

(3) Total recommended reimbursement.

(A) For non-priority clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(B) of this subsection.
(B) For priority clients. The recommended reimbursement is determined by summing the recommended reimbursement described in paragraph (2) of this subsection and the cost area component from paragraph (1)(C) of this subsection.

(d) Reimbursement determination authority. The reimbursement determination authority is specified in §355.101 of this title.

(e) Desk reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all provider agencies. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and provider agencies will be notified of the results of a desk review or an audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Provider agencies may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(f) Factors affecting allowable costs. Provider agencies must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs) and §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Reporting revenues. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

§355.6907. Reimbursement Methodology for Day Activity and Health Services.

(a) Day Activity and Health Care Services. Day activity and health care facilities provide noninstitutional care to clients residing in the community through rehabilitative nursing and social services. The Texas Department of Aging and Disability Services (DADS) [Human Services (DHS)] reimburses Day Activity and Health Services (DAHS) provider agencies for the services they provide to clients.

(b) General requirements. For the completion and submittal of cost reports pertaining to providers’ fiscal years ending in calendar year 1997 and subsequent years, providers must apply the information in this section. The Texas Health and Human Services Commission (HHSC) [DHS] applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(c) Cost-reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(d) Exclusion of cost reports.

(1) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursement. HHSC [DHS] excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services and are consistent with federal and state regulations.

(2) Individual cost reports may not be included in the database used for reimbursement determination if:

(A) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(B) an auditor determines that reported costs are not verifiable.

(c) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in paragraph (2)(A) of this subsection.

(e) Review of cost reports. HHSC may perform desk reviews or field audits on cost reports for [DHS staff perform either desk reviews or field audits of] all contracted providers. HHSC determines the [DHS] frequency and nature of the desk reviews and field audits (relating to the rules) to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal and, if necessary, an administrative hearing to dispute an action taken by HHSC [DHS] under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(f) Reimbursement determination. HHSC [DHS] determines reimbursement in the following manner.

(1) A [DHS] contracted provider [providers] must submit a cost report unless the provider meets one or more of the conditions in §355.105(b)(4)(D) of this title. [The number of days during the fiscal year that the provider submitted a cost report is the number of days.HHSC determines the number of days for which the report was submitted, after which the provider must submit a new report if circumstances beyond the control of the provider make the report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any governmental entity. Requests to be excused from submitting a cost report must be received by the DHS's Rate Analysis Department before the due date of the cost report.]

(2) HHSC [DHS] staff allocate payroll taxes and employee benefits to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense. The employee benefits for administrative staff are allocated directly to the corresponding salaries for those positions. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Workers’ Compensation Insurance (WCI), Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(3) HHSC [DHS] staff project all allowable expenses, excluding depreciation and mortgage interest, for the period from each provider's reporting period to the next ensuing reimbursement period. HHSC [DHS] staff determine reasonable and appropriate economic adjustments as described in §355.108 of this title (relating to Determination of Inflation Indices) to calculate the projected expenses. HHSC [DHS] staff also adjust reimbursement if new legislation, regulations, or economic factors affect costs as specified in §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(4) HHSC [DHS] staff combine allowable reported costs into the following four cost areas:

(A) Attendant care cost. This cost area is calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(B) Other direct care costs. This cost area includes other direct care staff; food and food service costs; activity costs; and other direct service costs.
(C) Facility cost area. This cost area includes building, maintenance staff, and utility costs.

(D) Administration and transportation cost area. This cost area includes transportation, administrative staff, and other administrative costs.

(5) For the cost areas described in paragraph (4)(B) - (D) of this subsection, allowable costs are totaled by cost area and then divided by the total units of service for the reporting period to determine the cost per unit of service. HSC (DAHS) staff rank from low to high

(6) The reimbursement determination authority is specified in §355.101 of this title (relating to Introduction).

(g) Allowable and unallowable costs. Providers must follow the guidelines specified in §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs) in determining whether a cost is allowable or unallowable. Providers must follow the guidelines for allowable and unallowable costs specified in §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs).

(h) DAHS-specific allowable costs. Allowable costs specific to the DAHS program are:

(1) certain medical equipment and supplies, if they are related to the services for which DADS (DAHS) has contracted. This may include, but is not limited to, supplies and equipment considered necessary to perform client assessments, medication administration, and nursing treatment.

(2) transportation costs if they are related to the services for which DADS (DAHS) has contracted. This includes the costs of garaging a vehicle that is primarily used to transport clients to and from the DAHS center. The vehicle may be garaged off-site for security reasons or for route efficiency management. In these cases of off-site vehicle garaging, a mileage log is not required if the vehicle is not used for personal use and is used solely (100%) for the delivery of DAHS services.

(i) DAHS-specific unallowable costs. Unallowable costs specific to the DAHS program are:

(1) physician's fees for completion of physician orders; and

(2) costs for which the provider received federal funds which have been offset as specified in §355.103(b)(15)(B) of this title (relating to Specification for Allowable and Unallowable Costs).

(j) Reporting revenue. Revenue must be reported on the cost report according to §355.104 of this title (relating to Revenue).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.
TRD-201204138

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 424-6900

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") proposes to amend 10 Texas Administrative Code Chapter 80, §§80.21, 80.25 and 80.41 relating to the regulation of the manufactured housing program. The rules are revised for clarification purposes.

Section 80.21(j): Added the electrical testing requirement that was previously in §80.25 because the requirement is only for new manufactured homes.

Section 80.25(j)(5): Removed the electrical testing requirement from the generic standards because the requirement is only for new manufactured homes.

Figure: 10 TAC §80.25(j)(5): Moved from §80.25(j)(6) but there is no change to the drawing and table.

Section 80.25(j)(6): Re-numbered paragraph to (5).

Section 80.41(d): Proposal to clarify the curriculum for the continuing education program.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small or micro-businesses because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules are in effect the public benefit as a result of enforcing the amendments will be to provide clarification of procedures.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the APA, Texas Government Code §2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P.O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later
than 30 days from the date that these proposed rules are published in the Texas Register.

SUBCHAPTER B. INSTALLATION STANDARDS AND DEVICE APPROVALS

10 TAC §80.21, §80.25

The amended sections are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rules.

§80.21. Requirements for the Installation of Manufactured Homes.

(a) - (i) (No change.)

(j) Electrical testing. At the time of installation, the following tests must be performed on all new manufactured homes:

(1) All site installed or shipped loose fixtures shall be subjected to a polarity test to determine that the connections have been properly made;
(2) All grounding and bonding conductors installed or connected during the home installation shall be tested for continuity; and
(3) All electrical lights, equipment, ground fault circuit interrupters and appliances shall be subjected to an operational test to demonstrate that all equipment is connected and functioning properly.

§80.25. Generic Standards for Multi-Section Connections Standards.

(a) - (i) (No change.)

(j) Electrical Connections: Depending on the model and/or manufacturer of the home, electrical crossovers may be located in either the front end and/or rear end of the home. Check along mating line for other labeled access panels.

(1) - (4) (No change.)

[Figure: 10 TAC §80.25(j)(5)]

(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 3, 2012.
TRD-201204106
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 475-2206

SUBCHAPTER D. LICENSING

10 TAC §80.41

The amended section is proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department, and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rule.

§80.41. License Requirements.

(a) - (c) (No change.)

(d) Continuing Education.

(1) Continuing education program courses must total eight (8) hours and shall include [any revisions to the Code within the preceding two years and the Department's current complaint resolution process and may also include any of the following]:

(A) A minimum of two (2) hours of continuing education addressing the law and rules with a focus on any revisions to the Code or Rules within the preceding two years;

(B) A minimum of one (1) hour of continuing education addressing the Department's current complaint resolution process.

(C) The following additional topics may be covered to satisfy the remaining credit hours needed not addressed in subparagraph (A) or (B) of this paragraph:

(i) installation requirements;
(ii) manufactured home financing;
(iii) operation of manufactured home parks and communities;
(iv) insurance requirements;
(v) industry best practices;
(vi) business ethics;
(vii) topical market statistics or trends; or
other subjects determined by the Department to relate directly to the lawful operation of a business subject to the Code.

(2) Acceptable evidence that the requirements of §1201.113(b) of the Standards Act have been satisfied by the license holder or their related person on record with the Department, would be a certificate, letter, or similar statement provided by the approved education provider indicating that the education program [course] was timely completed. Such evidence may be submitted by fax, mail, e-mail, or in person.

(3) For license renewal, evidence of any required completion, with reference to license number, must be received by the Department before a license may be renewed.

(4) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses, including prospective conditional courses in accordance with paragraph (5) of this subsection, a party wishing to be considered for such approval must submit[9, for each course for which approval is sought] an application, accompanied by the nonrefundable processing fee, and the following:

(A) A narrative overview of each [the] course, describing subject matter to be covered;

(B) Brief biographies, including credentials of each instructor demonstrating in depth knowledge of the subject matter to be taught;

(C) A copy of any course materials to be used. If the course materials are deemed to be proprietary they should be placed in a separate envelope, marked confidential, and accompanied by a written statement as to why they should not be treated as open records. There is no assurance that such materials will ultimately be accorded any exemption from disclosure under the Open Records provisions of the Government Code;

(D) A schedule of any fees to be charged for each [the] course;

(E) If completion of the continuing education program [course] is limited to any particular group, a description of the limitation;

(F) As such information becomes available, an indication as to the locations, times, and dates for offerings; and

(G) Such other information as the Department may require.

(5) Prospective continuing education programs, including all portions of education courses, must be pre-approved by the board prior to the course being held or broadcast.

(6) [Di] Once the Department determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the Board for consideration. The Department will provide the board with a written recommendation on each request. The staff will advise the applicant of the board’s action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(A) Approvals shall be for a period not to exceed two years. The Department may, at no cost, attend or send a representative to attend any approved portion of the continuing education program [course] to determine that the courses are [course is] being taught in accordance with the terms of approval.

(B) The Department may revoke or suspend approval of a continuing education program [course] if the Department determines that any of the courses are [course is] not being taught in accordance with the terms of approval or that any of the courses are [course is] not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Department, the Department order of suspension or revocation shall become final.

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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TRD-201204107
Joe A. Garcia
Executive Director, Manufactured Housing Division
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 475-2206

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TITLE 22. EXAMINING BOARDS

PART 38. TEXAS MIDWIFERY BOARD

CHAPTER 831. MIDWIFERY

The Texas Midwifery Board (board), with the approval of the Executive Commissioner of the Texas Health and Human Services Commission, proposes amendments to §§831.1 - 831.4, 831.7, 831.11 - 831.17, 831.20 - 831.24, 831.31 - 831.37, 831.40, 831.51, 831.52, 831.57, 831.58, 831.60, 831.65, 831.70, 831.75, 831.101, 831.111, 831.121, 831.131, 831.141, and 831.161 - 831.174; new §831.25; and the repeal of §831.54, concerning the licensing and regulation of midwives.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Chapter 831 has been reviewed and the board has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. The board has also proposed the repeal of §831.54 to eliminate redundant language and ensure uniform standards for midwifery practice in accordance with other existing sections.

The amendments, new rule, and repeal constitute the agency review of rules required by Government Code, §2001.039, and implement Senate Bill 1733 of the 82nd Legislature, Regular Session, 2011, which amends Health and Safety Code, Chapter 55, relating to the licensing of military spouses and has added new §831.25 concerning military spouses. The review of the sections clarifies and updates the rules, and the removal of obsolete language ensures consistency among the sections.

SECTION-BY-SECTION SUMMARY

PROPOSED RULES August 17, 2012 37 TexReg 6235
Amendments to §831.1 add the text "licensing military spouses" in the description of the rules which is the name of the new §831.25; and remove "protocols" consistent with the repeal of §831.54.

Amendments to §831.2 include wording changes consistent with existing language at §831.65 and also reflect the name change of the Texas Medical Board, which was previously known as the Texas Board of Medical Examiners.

Amendments to §831.3 remove unnecessary wording related to the citation for the Texas Midwifery Act, Occupations Code, Chapter 203 (the "Act") and add the word "unexcused" to clarify that excused absences are not counted as grounds for membership termination by the board.

Amendments to §831.4 reflect that board member training already includes board policies training.

The amendment to §831.7 reflects the current mailing address of the board.

The amendment to §831.11 removes obsolete language related to the transition from one-year to two-year license terms.

Amendments to §831.12 remove obsolete language related to the transition from one type of late fee to another and add a new $20 fee for the issuance of a duplicate license.

Amendments to §§§831.13 - 831.17, 831.22, and 831.24 reflect revision to the titles of the respective sections or new section names.

The amendment to §831.20 removes a reference to "protocols" consistent with the repeal of §831.54.

Amendments to §831.21 clarify that the board may refuse to issue a renewal license to a midwife based on a criminal conviction.

Amendments to §831.23 reflect current licensing practices by clarifying the section title and making corresponding changes to clarify that a denied or revoked license may not be not "reissued"; instead, an applicant may be issued a new license. New language requiring that an applicant meet the current requirements for licensure is added.

New §831.25 implements Senate Bill 1733 (2011, Regular Session) related to the licensing of military spouses.

The amendment to §831.31 clarifies the language by changing "will" to "shall."

The amendment to §831.32 requires that a midwifery student enrolled in an approved course must complete specific increased clinical requirements in accordance with a recent change to national certification standards.

Amendments to §831.33 correct obsolete language to reflect Sunset legislation in the change from "documentation" to "licensure" because midwives receive a license and not a "letter of documentation."

Amendments to §831.34 clarify that education course approval may be revoked for failing to meet one or more of the standards set forth in rule.

Amendments to §831.35 add an increased requirement that a new exam application must include a "certified audit" rather than "a financial statement or balance sheet."

Amendments to §831.36 add a new method for complaint notification in order to permit a board investigator or inspector to hand deliver the notice.

Amendments to §831.37 add the words "and rules" and reflect the current content of the board's jurisprudence exam.

Amendments to §831.40 clarify that continuing education may be completed to satisfy either initial or renewal licensure requirements.

Amendments to §831.51 add the phrase "using reasonable skill and knowledge" to set a clear and consistent standard for regulation, update a reference, remove a reference to "protocols" consistent with the repeal of §831.54, and insert language formerly included in §831.54 (proposed for repeal) on the midwife's responsibility to assess the client on an ongoing basis to ensure that she is still an appropriate candidate for midwifery care.

Amendments to §831.52 remove a reference to "protocols" consistent with the repeal of §831.54.

The repeal of §831.54 eliminates duplicative requirements reflected in §§§831.60, 831.65, 831.70, and 831.75. The board finds it unnecessary to further require a midwife to create individualized policies and protocols under §831.54 because it is more protective of public health to have one uniform set of regulations in §831.60, Prenatal Care; §831.65, Labor and Delivery; §831.70, Postpartum Care; and §831.75, Newborn Care During the First Six Weeks After Birth.

Amendments to §§§831.57, 831.131, 831.141, 831.161, 831.163, 831.169, 831.171 and 831.174 include non-substantive editorial changes to improve readability within the sections and eliminate duplicate language.

Amendments to §831.58 remove a reference to "protocols" consistent with the repeal of §831.54.

Amendments to §831.60 add the phrase "using reasonable skill and knowledge" to set a clear and consistent standard for regulation and include a wording change consistent with existing language at §831.2 to reflect that pre-term labor is a stage of less than 37 weeks.

Amendments to §831.65 add the phrase "using reasonable skill and knowledge" to set a clear and consistent standard for regulation, remove a reference to "protocols" consistent with the repeal of §831.54, and include a wording change consistent with existing language at §831.2 to reflect that pre-term labor is a stage of less than 37 weeks.

Amendments to §831.70 add the phrase "using reasonable skill and knowledge" to set a clear and consistent standard for regulation and include wording changes consistent with new language requiring transfer of care for any hypertensive disorder.

Amendments to §831.75 add the phrase "using reasonable skill and knowledge" to set a clear and consistent standard for regulation and notes the new name of §851.52 of this title.

Amendments to §831.101 remove language on the flow rate of oxygen as a specific flow in order to ensure consistency with current practice guidelines.

Amendments to §831.111 add new subsection (b) and correct language to be consistent with Health and Safety Code, §81.091.

Amendments to §831.121 clarify language and add a new requirement regarding a midwife's responsibility to document any client's refusal to permit the tests on a specific board form.
Amendments to §831.162 add an exemption to the five year limit on considering a complaint in cases of birth certificate misconduct or continuing threats to public health, welfare or safety.

Amendments to §831.164 include a clarification that a category is only assigned for a jurisdictional complaint.

Amendments to §831.165 add new wording to establish that abandoning a client immediately after delivery constitutes failure to practice midwifery in a manner consistent with public health and safety.

Amendments to §831.166 remove the requirement that respondents must be notified of a complaint within 10 days and add a new electronic option for notification of the status of the complaint.

Amendments to §831.167 remove the phrase "due to insufficient evidence" to permit the board to close a complaint for other reasons.

Amendments to §831.168 add the word "formal" to the section title in order to distinguish that the hearings referenced in this section are conducted by the State Office of Administrative Hearings.

Amendments to §831.170 add new language to clarify that a proposed agreed order is not effective until approved by the board.

Amendments to §831.172 clarify that each day a violation continues is a separate violation.

Amendments to §831.173 add non-substantive wording to reflect the abbreviation of "State Office of Administrative Hearings" as "SOAH."

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications as a result of administering the sections as proposed. The effect on state government will be an estimated increase in revenue to the state of approximately $100 per year as a result of proposed new fee for duplicate licenses. It is estimated that costs to the state to administer the new provisions will be equal to the estimated fee increases. Ms. Bourland has also determined that there will be no fiscal implications to local government as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

The anticipated economic cost to persons is the new $20 fee for a duplicate license as set out in the amendment to §831.12. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of midwives.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, by fax to (512) 834-6677 or by email to midwifery@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. THE BOARD

22 TAC §§831.1 - 831.4, 831.7

STATUTORY AUTHORITY

The amendments are authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Texas Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.


§831.1. Introduction.

(a) (No change.)

(b) Construction. This chapter covers these sections cover definitions; the Midwifery Board; board member training; the petition for the adoption of a rule; license required; fees; initial application; renewal; late renewal; renewal for retired midwives performing charity work; state midwifery roster; grounds for denial of application or disciplinary action; application or renewal with criminal conviction; surren-
nder of license; reissuance of license after revocation, suspension or surrender; request for criminal history evaluation letter; licensing military spouses; education committee; basic midwifery education; education course approval; education course denial or revocation of approval; exam approval, denial, or revocation of approval; complaints concerning education courses and comprehensive exams; jurisprudence examination; continuing education; standards for the practice of midwifery in Texas; inter-professional care definitions; [protocols] termination of the midwife-client relationship; transfer of care in an emergency situation; prenatal care; labor and delivery; postpartum care; newborn and infant care; the administration of oxygen; eye prophylaxis; newborn screening; the informed choice and disclosure statement; the provision of support services; complaint review committee; reporting violations and/or complaints; records of complaints; complaint categories; disciplinary action and guidelines; complaint investigation; informal settlement conferences; hearings; disciplinary action; complaint disposition and appeals; refunds; cease and desist order; emergency suspension; and default orders.

§831.2 Definitions.

The following words and terms when used in this chapter [these sections] shall have the following meaning unless the context clearly indicates otherwise:

(1) - (15) (No change.)

(16) Normal childbirth—The labor and vaginal delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(17) Physician—A physician licensed to practice medicine in Texas by the Texas Medical Board [of Medical Examiners].

(18) - (20) (No change.)

(21) Standing delegation orders—Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Medical Board [of Medical Examiners] in Chapter 193 (relating to Standing Delegation Orders [standing delegation orders]) and §831.52 of this title (relating to Inter-professional Care).

§831.3 Midwifery Board.

(a) Membership. Members are appointed by the Commissioner in accordance with the composition specified by the Texas Midwifery Act. A record of attendance shall be kept at each meeting. If a member misses two consecutive meetings, written notice shall be given to the member. A third consecutive unexcused absence from a regularly scheduled meeting shall be grounds for membership termination by the board.

(b) - (d) (No change.)

§831.4 Board Member Training.

(a) (No change.)

(b) The training program must provide the person with information regarding:

(1) this chapter and the programs, functions, rules, policies, and budget of the Midwifery Board;

(2) - (4) (No change.)

(c) (No change.)

§831.7 Petition for the Adoption of a Rule.

(a) (No change.)

(b) Submission of the petition.

(1) - (3) (No change.)

(4) The petition shall be mailed or delivered to the Texas Midwifery Board, Department of State Health Services, Mail Code 1982 P.O. Box 149347, [H100 West 49th Street] Austin, Texas 78714-9347 [78756].

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

TRD-201204140
Andrew MacLaurin
Chair
Texas Midwifery Board
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 776-6972

SUBCHAPTER B. LICENSURE

22 TAC §§831.11 - 831.17, 831.20 - 831.25

STATUTORY AUTHORITY

The amendments and new rule are authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Texas Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.


§831.11 License Required.

(a) (No change.)

(b) A midwife license shall be valid for a renewal period of two years [starting March 1, 2006] except for initial licensure.

(c) (No change.)

§831.12 Fees.

All fees must be made payable to the Department of State Health Services and are non-refundable.

(1) - (2) (No change.)

(3) [Late processing fee (before September 1, 2007)]

(4) Duplicate license fee—$20.

§125.12

(3) [Late processing fee (on or after September 1, 2007)]:

(A) less than 90 days late—a fee that is equal to 1/4 times the amount of the renewal fee due; or

(B) more than 90 days and less than one year late—a fee that is equal to 1/2 times the amount of the renewal fee due.
§831.13. Initial Application for Licensure.
(a) - (b) (No change.)


[License renewal.] Licensed midwives must apply for license renewal during the last January of each two-year renewal period. The Midwifery Program will send renewal applications to licensed midwives during the last December of each renewal period. However, each midwife is solely responsible for compliance with the requirements for license renewal, and nonreceipt of the renewal application mailed by the Midwifery Program shall not constitute an acceptable excuse for failure to comply. A midwife’s application for license renewal must include the following:

1. - (6) (No change.)

§831.15. Late Renewal.

(a) Late license renewal. A midwife who fails to apply for license renewal by March 1 of the end of a renewal period in which the midwife is currently licensed, as evidenced by a valid United States Postal Service or recognized commercial carrier postmark, may apply for late license renewal on or before March 1 of the following year. Applications for late license renewal must include the following:

1. each of the items listed in §831.14 of this title (relating to License Renewal); and

2. (No change.)

(b) (No change.)

§831.16. Renewal for Retired Midwives Performing Charity Work.

(a) - (b) (No change.)

(c) A retired midwife who is not practicing midwifery in Texas, except for providing voluntary charity care, may apply to renew his or her midwifery license under this subsection by submitting all the items required by §831.14 of this title (relating to License Renewal) except for the retired midwife renewal fee, not the regular renewal fee.

(d) - (f) (No change.)


The Midwifery Program shall maintain a roster of all individuals currently licensed to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The Midwifery Program shall also provide information on new and/or late licensees to individual county clerks and local registrars of births during the course of a year as needed.

§831.20. Grounds for Denial of Application or Disciplinary Action.

The following are grounds [Grounds] for denial of application for licensure or license renewal and for disciplinary action.

(1) The Midwifery Board may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

A) - (K) (No change.)

L) failure to submit midwifery records [and/or protocols] in connection with the investigation of a complaint; or

M) (No change.)

(2) (No change.)

§831.21. Application or Renewal with Criminal Conviction.

Licensure of persons with criminal convictions.

1. The Midwifery Board may refuse to issue a license to, or renew the license of, any individual who has been initially convicted of a felony or a misdemeanor involving moral turpitude, or whose probation imposed pursuant to such conviction has been revoked by the court.

2. (No change.)

§831.22. License Surrender (of License).

(a) - (c) (No change.)

§831.23. Application for a New [Reissuance of] License after Revocation, Suspension, or Surrender.

(a) A person whose license to practice midwifery in this state has been revoked or suspended by the Midwifery Board or who has surrendered his or her license after having received notice that the Midwifery Program is investigating a complaint may not apply for a new [reissuance of] license until the applicant has complied with all requirements imposed by the Midwifery Board in connection with the revocation, suspension, or surrender. If the Midwifery Board proposes to deny the application for a new [reissuance of] license, an applicant may request a hearing in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter.

(b) The Midwifery Board may issue [reissue] a new license to a midwife who surrendered his or her license while an investigation or disciplinary action was pending only if the Midwifery Board finds that:

1. the applicant is competent to resume practice; 

2. the Midwifery Board has no evidence of current or continuing violations by the applicant of the Act or this subchapter; and [ - ]

3. the applicant meets the current requirements for licensure.


(a) - (e) (No change.)

§831.25. Licensing of Military Spouses.

(a) This section sets out the alternative license procedure for military spouse required under Occupations Code, Chapter 55 (relating to License While on Military Duty and for Military Spouse).

(b) The spouse of a person serving on active duty as a member of the armed forces of the United States who holds a current license issued by another state that has licensing requirements shall complete and submit an application form and fee to the department. In accordance with Occupations Code, §55.004(c), the department may waive any prerequisite to obtaining a license after reviewing the applicant’s credentials and determining that the applicant holds a license issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

(c) The spouse of a person serving on active duty as a member of the armed forces of the United States who within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months is qualified for licensure based on the previously held license, if there are no unresolved complaints against the applicant and if there is no other bar to licensure, such as criminal background or non-compliance with a board order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.
TRD-201204142
§203.151, EXAMINATION

The earliest

The amendments are authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Texas Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.


§831.31. Education Committee

(a) The chair of the Midwifery Board shall appoint an education committee for a two year term, with the approval of the Midwifery Board, to consider all issues related to mandatory basic and continuing midwifery education. The Education Committee shall review all applications submitted by the Midwifery Program staff for approval of mandatory basic midwifery education courses or comprehensive exams, as well as complaints concerning approved courses or exams. The Education Committee shall consist of members of the Midwifery Board:

(1) - (3) (No change.)
(b) - (c) (No change.)

§831.32. Basic Midwifery Education.

(a) (No change.)
(b) Mandatory basic midwifery education shall:

(1) - (5) (No change.)
(6) provide clinical experience/precceptorship of at least one year in duration but no more than five years in duration and equivalent to 1350 clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(A) (No change.)
(B) serving as the primary midwife, under supervision, in attending 20 additional births, at least 10 of which shall be out-of-hospital births. A minimum of 3 of the 20 births attended as primary midwife under supervision must be with women for whom the student has provided primary care during at least 4 prenatal visits, birth, newborn exam and one postpartum exam;

(C) (No change.)
(7) (No change.)
(c) (No change.)

§831.33. Education Course Approval.

(a) Course approval.

(1) The course supervisor/administrator shall submit an application form and a non-refundable initial midwifery course application fee to the Midwifery Program with the following supporting documentation:

(A) - (D) (No change.)
(E) written policies to include:

(i) - (iii) (No change.)
(iv) requirements for state licensure

[documentation];

(v) - (vii) (No change.)
(2) - (8) (No change.)
(b) - (d) (No change.)

§831.34. Education Course Denial or Revocation of Approval.

(a) (No change.)
(b) Revocation of course approval. The Midwifery Board may revoke the approval of a course after notifying the course supervisor/administrator of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(1) the course no longer meets one or more of the standards established by this subsection;
(2) - (5) (No change.)
(c) - (f) (No change.)

§831.35. Exam Approval, Denial, or Revocation of Approval.

Comprehensive exams.

(1) Comprehensive exam approval.

(A) Any approved education course or midwifery association may submit an application form and a non-refundable exam initial application fee to the Midwifery Program with the following supporting documentation:

(i) - (v) (No change.)
(vi) a certified audit [financial statement or balance sheet] (within the last year) for the course supervisor/administrator or course owner or midwifery association and disclosure of any bankruptcy within the last five years; and

(vii) (No change.)
(B) - (F) (No change.)
(2) - (6) (No change.)

§831.36. Complaints Concerning Education Courses and Comprehensive Exams.

(a) - (b) (No change.)
(c) Complaint investigation. The Midwifery Program Director shall:

(1) notify the course supervisor/administrator or course owner or midwifery association of the Midwifery Program's receipt of the complaint by certified mail or hand delivery;

(2) - (7) (No change.)
(d) - (i) (No change.)
§831.37. Jurisprudence Examination.

(a) (No change.)

(b) The subject matter covered by the examination shall include the Act, this chapter, and other Texas laws and rules which affect midwifery practice, as described in the current Texas Midwifery Basic Information and Instructor Manual.

(c) - (e) (No change.)

§831.40. Continuing Education.

All continuing education taken by midwives for the purpose of obtaining or renewing a midwifery license must be in accordance with this section.

(1) - (4) (No change.)

(5) Course approval. Continuing education courses attended to fulfill licensure or license renewal requirements shall be accepted when the courses:

(A) - (B) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Andrew MacLaurin
Chair
Texas Midwifery Board

Earlyest possible date of adoption: September 16, 2012
For further information, please call: (512) 776-6972

♦ ♦ ♦

SUBCHAPTER D. PRACTICE OF MIDWIFERY

22 TAC §§831.51, 831.52, 831.57, 831.58, 831.60, 831.65, 831.70, 831.75, 831.101, 831.111, 831.121, 831.131, 831.141

STATUTORY AUTHORITY

The amendments are authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Texas Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.


§831.51. Standards for the Practice of Midwifery in Texas.

(a) - (d) (No change.)

(e) Midwifery care supports individual rights and self-determination within the boundaries of safety. Using reasonable skill and knowledge, the [the] midwife shall:

(1) (No change.)

(2) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care:

(3) [(2)] provide clients with information about other providers and services when requested or when the care required is not within the scope of practice of midwifery[; or as further limited by the protocols of the individual midwife]; and

(4) [(2)] practice in accordance with the knowledge, clinical skills, and judgments described in the Midwives Alliance of North America (MANA) Core Competencies for Basic Midwifery Practice, adopted August 4, 2011 [October 3, 1994] within the bounds of the midwifery scope of practice as defined by the [Texas Midwives] Act; and the Texas Midwifery Board Standards for the Practice of Midwifery in Texas and; the protocols of the individual midwifery service/practice].

(f) - (h) (No change.)

§831.52. Inter-professional Care.

The following definitions regarding inter-professional care of women within a midwifery model of care apply to this chapter.

(1) - (2) (No change.)

(3) Referral is the process by which a midwife directs the client to a health care professional who has current obstetric or pediatric knowledge and is either a physician licensed in the United States; or working in association with a licensed physician. The client and the physician (or associate) shall determine whether subsequent care shall be provided by the physician or associate, the midwife, or through collaboration between the physician or associate and midwife. The client may elect not to accept a referral or a physician or associate's advice, and if such is documented in writing, the midwife may continue to care for the client [according to his/her own policies and protocols].

(4) - (5) (No change.)

§831.57. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the [a] midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

(A) - (C) (No change.)

(2) (No change.)

§831.58. Transfer of Care in An Emergency Situation.

In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and immediate transfer of care [in accordance with the protocols of his or her practice] by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

(1) - (2) (No change.)

§831.60. Prenatal Care.

(a) Using reasonable skill and knowledge, the [the] midwife shall collect, assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend referral as defined in
§831.52 of this title (relating to Inter-professional Care) and document that recommendation in the midwifery record:

(1) - (16) (No change.)
(17) any other condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(c) If on initial or subsequent assessment, one of the following conditions exists, the midwife shall recommend transfer in accordance with §831.52 of this title and document that recommendation in the midwifery record:

(1) - (5) (No change.)
(6) pre-term labor (less than 37 weeks);
(7) - (14) (No change.)
(15) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

(d) (No change.)

§831.65. Labor and Delivery.

(a) Using reasonable skill and knowledge, the midwife shall evaluate the client when the midwife arrives for labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) - (d) (No change.)

(e) If on initial or subsequent assessment during labor or delivery, one of the following conditions exists, the midwife shall initiate immediate emergency transfer in accordance with §831.58 of this title (relating to Transfer of Care in an Emergency Situation) and document that action in the midwifery record:

(1) - (10) (No change.)
(11) preterm labor (less than 37 weeks);
(12) (No change.)
(13) laceration(s) requiring repair beyond the scope of practice of the midwife;
(14) - (15) (No change.)
(16) any other condition or symptom which could threaten the life of the mother or fetus, as assessed by a midwife exercising reasonable skill and knowledge.

§831.70. Postpartum Care.

(a) Using reasonable skill and knowledge, the midwife shall assess the mother during the immediate postpartum period by monitoring vital signs, uterine fundus, bleeding and subjective status for a minimum of two hours after mother's condition is stable.

(b) Using reasonable skill and knowledge, the midwife shall:

(1) - (4) (No change.)

(c) If on any postpartum assessment one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional and document that recommendation in the midwifery record:

(1) - (2) (No change.)
(3) major depression; or

(4) gestational hypertension; or

(5) any other condition or symptom which could threaten the health of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any postpartum assessment one of the following conditions exists, the midwife shall initiate immediate emergency transfer in accordance with §831.58 of this title (relating to Transfer of Care in an Emergency Situation), initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) - (2) (No change.)
(3) any hypertensive disorder, including preeclampsia/eclampsia;
(4) (No change.)
(5) any other condition or symptom which could threaten the life of the mother, as assessed by a midwife exercising reasonable skill and knowledge.

§831.75. Newborn Care During the First Six Weeks After Birth.

(a) (No change.)

(b) Using reasonable skill and knowledge, the midwife shall:

(1) - (3) (No change.)

(c) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall document referral in accordance with §831.52 of this title (relating to Inter-professional Care) and document that recommendation in the midwifery record:

(1) - (4) (No change.)
(5) any other abnormal newborn behavior or appearance which could adversely affect the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(d) If on any newborn assessment in the immediate postpartum period (first six hours of life), one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional in accordance with §831.58 of this title (relating to Transfer of Care in an Emergency Situation), initiate emergency care as indicated by the situation, continue care as needed, and document that action in the midwifery record:

(1) - (15) (No change.)
(16) other abnormal newborn behavior or appearance which could threaten the life of the newborn, as assessed by a midwife exercising reasonable skill and knowledge.

(e) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall recommend referral to an appropriate health care professional in accordance with §831.52 of this title and document that recommendation in the midwifery record:

(1) - (3) (No change.)
(4) any other abnormal newborn behavior or appearance which could adversely affect the infant, as assessed by a midwife exercising reasonable skill and knowledge.

(f) If on any newborn assessment after the immediate postpartum period, one of the following conditions exists, the midwife shall initiate immediate transfer to an appropriate health care professional in
appropriately

closure

Newborn

and

§831.111.  Administration of Oxygen.

(a) - (b) (No change.)

(c) Provisions. This section establishes that:

(1) intrapartum oxygen may be administered to the mother [via mask at 8-10 liters/minute] for the following:

(A) - (D) (No change.)

(2) postpartum oxygen may be administered while monitoring according to the Midwifery Practice Standards and Principles:

(A) to the newborn during the initial neonatal period at a rate [of 5 liters/minute] concurrent with American Academy of Pediatrics Neonatal Resuscitation guidelines; or

(B) (No change.)

(3) (No change.)

(d) (No change.)

§831.111.  Eye Prophylaxis.

(a) Each midwife is responsible for administering or causing to be administered to [seeing that] every infant which she or he delivers [receives] the necessary eye prophylaxis to prevent ophthalmia neonatorum[,] in accordance with the medications specified by the department in Health and Safety Code, §81.091 [Department of State Health Services].

(b) A midwife must obtain a written exemption from treatment in accordance with Health and Safety Code, §81.009 from any parent who refuses to allow a midwife to administer or cause to be administered eye prophylaxis in accordance with Health and Safety Code, §81.091.

(c) [4b] The administration and possession of prophylaxis by a midwife is not a violation of the provisions of the Health and Safety Code, Chapter 483, concerning dangerous drugs.

§831.121.  Newborn Screening.

(a) Each midwife who assists at the birth of a child is responsible for performing the [seeing that] newborn screening tests [are performed] according to the Health and Safety Code, Chapters 33 and 34, and 25 Texas Administrative Code §§37.51 - 37.65 [27.69] (relating to Newborn Screening Program) or making a referral in accordance with this subsection. [The midwife may perform the tests or refer for them.] If the midwife performs the tests, then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the midwifery program in order to be licensed.

(1) - (2) (No change.)

(b) - (c) (No change.)

(d) Newborn Screening Test Objection Form. A midwife must obtain a completed and signed Newborn Screening Test Objection Form from any parent who refuses to allow a midwife to perform the newborn screening tests.


As required by the Act, §203.351 (relating to Informed Choice and Disclosure Requirements), the [each] midwife shall disclose in oral and written form to a prospective client the limitations on the skills and practices of the midwife. The written informed choice and disclosure statement which has been approved by the Midwifery Board shall include:

(1) - (3) (No change.)


This provision applies to the Department of State Health Services (department), a local health department, a public health district, or a local health unit which is owned, operated, or leased by a political subdivision of the state. The appropriate governmental entity is required to provide clinical and laboratory services to pregnant women and newborns who are clients of midwives as long as the services are required of [the] midwives by the Act, §203.355 (relating to Support Services). The procedures and requirements for the clinical and laboratory services are as follows.

(1) - (3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

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Andrew MacLaurin
Chair
Texas Midwifery Board

Earliest possible date of adoption: September 16, 2012

For further information, please call: (512) 776-6972

STAR

22 TAC §831.54

(Edited note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Midwifery Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Texas Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.


This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. COMPLAINT REVIEW

22 TAC §§831.161 - 831.174

STATUTORY AUTHORITY

The amendments are authorized by the Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Texas Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Occupations Code, Chapter 203.


[Complaint Review Committee.] With the approval of the Midwifery Board, the chair of the Midwifery Board shall appoint a Complaint Review Committee for two-year terms to consider all complaints filed against licensed midwives or unlicensed individuals and to make recommendations to the Midwifery Board.

(1) - (3) (No change.)

§831.162. Reporting Violations and/or Complaints.

Report of a complaint. Any person or agency may contact the Midwifery Program by telephone, in person, or in writing, alleging that a licensed midwife has violated the Act, any provisions of this chapter [subchapter], or any other law or rule relating to the practice of midwifery in Texas.

(1) (No change.)

(2) The complaint review process begins when:

(A) - (C) (No change.)

(D) the Midwifery Program confirms that the complaint alleges acts which took place not more than two years before the receipt of the complaint unless the Midwifery Program Director, in consultation with the Complaint Review Committee Chair, believes the complaint warrants consideration for acts which took place not more than five years before receipt of the complaint; [and]

(E) the Midwifery Program assigns a case number; and

[F] the Midwifery Program and the Complaint Review Committee may waive the time limitation in subparagraph (D) of this paragraph in cases of birth certificate misconduct or continuing threats to public health, welfare, or safety when presented with specific evidence that warrants such action.

(3) (No change.)

§831.163. Records of Complaints.
[Records of complaints.] The Midwifery Program shall maintain the following information concerning each complaint filed, if applicable:

(1) - (6) (No change.)

(7) any disciplinary action taken; and

(8) (No change.)

§831.164. Complaint Categories.

(a) The Midwifery Program Director shall assign a category for each jurisdictional complaint for the initial allocation of investigative resources in accordance with Midwifery Board policy.

(b) (No change.)

§831.165. Disciplinary Action and Guidelines.

(a) - (b) (No change.)

(c) Failure by a midwife to practice midwifery in a manner consistent with public health and safety shall include, but shall not be limited to:

(1) (No change.)

(2) mistreating a client, including, but not limited to:

(A) (No change.)

(B) abandonment immediately before or during labor or immediately after delivery; or

(C) (No change.)

(3) - (8) (No change.)

§831.166. Complaint Investigation.

(a) The Midwifery Program Director or director's designee shall:

(1) notify the midwife of the complaint by certified mail [within ten working days of receipt of the complaint];

(2) - (8) (No change.)

(b) The Midwifery Board shall periodically notify the parties of the status of the complaint until final disposition of the complaint. Notification may be provided electronically through the Midwifery Board's website.

§831.167. Informal Settlement Conferences.

The Complaint Review Committee chair shall conduct the conference. If the chair is absent, the vice-chair shall preside.

(1) (No change.)

(2) Order of presentation. After explaining the purpose of the conference and other related matters, the chair or vice-chair shall state the case number and the nature of the complaint.

(A) - (B) (No change.)

(C) Following review of all evidence and statements, the Complaint Review Committee shall make one of the following recommendations to the Midwifery Board:

(i) closure of the complaint [due to insufficient evidence]; or

(ii) (No change.)

(D) (No change.)

§831.168. Formal Hearings.

(a) - (d) (No change.)


(a) Penalties and sanctions. If the Midwifery Board finds that a person has violated the Act and/or rules adopted under the Act or any other law or rule relating to the practice of midwifery in Texas, it shall enter an order imposing one or more of the following:

(1) - (12) (No change.)

(b) - (e) (No change.)
§831.170. Complaint Disposition and Appeals.
   (a) The Midwifery Board may, unless precluded by law or this section, make a disposition of any complaint by agreed order. A proposed agreed order is not effective until the full Midwifery Board has approved the agreed order.
   (b) - (c) (No change.)

§831.171. Refunds.
   (a) In addition to any other disciplinary action authorized by the Act or this chapter, the Midwifery Board may order a licensed Midwife to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.
   (b) - (c) (No change.)

§831.172. Cease and Desist Order.
   (a) (No change.)
   (b) A violation of an order under this section constitutes grounds for the imposition of an administrative penalty. Each day a violation continues is a separate violation.

§831.173. Emergency Suspension.
   (a) - (b) (No change.)
   (c) A license may be suspended under this section without notice or hearing on the complaint if:
      (1) action is taken to initiate proceedings for a hearing before the State Office of Administrative Hearings (SOAH) simultaneously with the temporary suspension; and
      (2) (No change.)
   (d) The SOAH [State Office of Administrative Hearings] shall hold a preliminary hearing not later than the 14th day after the date of the temporary suspension to determine if there is probable cause to believe that a continuing and imminent threat to the public welfare still exists. A final hearing on the matter shall be held not later than the 61st day after the date of the temporary suspension.

§831.174. Default Order.
   (a) - (d) (No change.)
   (e) This section [subsection] also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party’s last known address as shown on the department’s records, with no showing of actual receipt by the defaulting party or the defaulting party’s agent. In this [last] situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party’s last known address.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

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Andrew MacLaurin
Chair
Texas Midwifery Board
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For further information, please call: (512) 776-6972

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 401. ADMINISTRATIVE PRACTICE AND PROCEDURE


The purpose of the proposed amendments is to make grammatical changes and other minor wording changes which should help clarify existing requirements. The proposal also includes the creation of a new Subchapter J, Charges for Public Records, which will adopt by reference the Texas Attorney General’s schedule for charging for public records, and a new Subchapter K, to adopt by reference the Texas Comptroller’s Historically Underutilized Businesses (HUB) program.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments and new rules are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendments and new rules are in effect, the public benefit from the passage is to provide clear and concise rules regarding the agency’s administrative practice and procedures used in performing its statutorily required duties and responsibilities.
Comments regarding the proposed amendments and new rules may be submitted, in writing, within 30 days following the publication of this notice in the Texas Register to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcpf.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

37 TAC §§401.5, 401.11, 401.13

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.

§401.5. Delegation of Authority.

All decisions to suspend, revoke, or deny an application for any certificate or approval, or to suspend or place on probation the holder of such certificate or approval, or to impose an order for restitution, remedial action, or administrative penalties pursuant to Government Code, Chapter 419, shall be made by the executive director or designee.

§401.11. Conduct of Commission and Advisory Meetings.

(a) Statements concerning items which are part of the commission’s posted agenda. Persons who desire to make presentations to the commission concerning matters on the agenda for a scheduled commission (meeting) or fire fighter advisory committee meeting shall complete registration cards which shall be made available at the entry to the place where the commission’s scheduled meeting is to be held. The registration cards shall include blanks in which all of the following information must be disclosed:

1. Name of the person making a presentation;
2. A statement as to whether the person is being reimbursed for the presentation; and if so, the name of the person or entity on whose behalf the presentation is made;
3. A statement as to whether the presenter has registered as a lobbyist in relationship to the matter in question;
4. A reference to the agenda item which the person wishes to discuss before the commission;
5. An indication as to whether the presenter wishes to speak for or against the proposed agenda item; and
6. A statement verifying that all factual information to be presented shall be true and correct to the best of the knowledge of the speaker.

(b) Discretion of the presiding officer. The presiding officer of the commission or the advisory committee, as the case may be, shall have discretion to employ any generally recognized system of parliamentary procedures, including, but not limited to Robert’s Rules of Order for the conduct of commission or committee meetings, to the extent that such parliamentary procedures are consistent with the Texas Open Meetings Act or other applicable law and these rules. The presiding officer shall also have discretion in setting reasonable limits on the time to be allocated for each matter on the agenda of a scheduled commission meeting or advisory committee meeting and for each presentation on a particular agenda item. If several persons wish to address the commission or advisory committee on the same agenda item, it shall be within the discretion of the chair to request that persons who wish to address the same side of the issue coordinate their comments, or limit their comments to an expression in favor of views previously articulated by persons speaking on the same side of an issue.

(c) Requests that issues be placed on an agenda for discussion. Persons who wish to bring issues before the commission shall first address their request in writing to the executive director [General Counsel and Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286]. Such requests should be submitted at least 15 [40] days in advance of commission or fire fighter advisory committee meetings[, but in no event less than 15 days]. The decision whether to place a matter on an agenda for discussion before the full commission, or alternatively before the fire fighter advisory committee [a commission advisory committee], or with designated staff members, shall be within the discretion of the appropriate presiding officer.

§401.13. Computation of Time.

(a) Computing Time. In computing any period of time prescribed or allowed by these rules, by order of the Agency, or by any applicable statute, the period shall be computed from the beginning of the day following the day on which the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. A party or attorney of record notified [by mail] under §401.61 of this title (relating to Record) is deemed to have been notified on the date [on] which notice is sent [mailed].

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the executive director or designee, upon the following conditions:

1. A written motion must be duly filed with the executive director or designee prior to the expiration of the applicable period of time allowed for such filings.
2. The written motion must show good cause for such extension and that the need is not caused by the neglect, indifference, or lack of diligence on the part of the movant.
3. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on July 31, 2012.

TRD-201204011

Don Wilson

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813

SUBCHAPTER B. RULEMAKING PROCEEDINGS

37 TAC §§401.17, §401.19
The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.

§401.17. Requirements.

Except for the requirements of mandatory rule development by the fire fighter advisory committee [committees] provided for by law, the procedure for rulemaking is governed by Subchapter B of the Administrative Procedure Act (APA).

§401.19. Petition for Adoption of Rules.

(a) Any person may petition the commission [Commission] requesting the adoption of a new rule or an amendment to an existing rule as authorized by the APA, §2001.021.

(b) Petitions shall be sent to the executive director. Petitions shall be deemed sufficient if they contain:

(1) the name and address of the person or entity on whose behalf the application is filed;

(2) specific reference to the existing rule which is proposed to be changed, amended, or repealed;

(3) the proposed effective date; and

(4) a justification for the proposed action set out in narrative form with sufficient particularity to inform the commission [Commission] and any other interested person of the reasons and arguments on which the petitioner is relying.

(c) The executive director shall direct that the petition for adoption of rules be placed on the next agenda for discussion by the commission [Commission] or the fire fighter [an] advisory committee with subject matter jurisdiction in accordance with §401.11 of this title (relating to Conduct of Commission and Advisory Meetings).

(d) A request for clarification of a rule shall be treated as a petition for a rule change. The commission [Commission] staff may request submission of additional information from the applicant to comply with the requirements of subsection (b) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Don Wilson
Executive Director
Texas Commission on Fire Protection

Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 936-3813

SUBCHAPTER C. EXAMINATION APPEALS PROCESS

37 TAC §401.21, §401.23

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.

§401.21. Examination Challenge.

(a) An examinee who seeks to challenge the failure of an examination must submit a written request for an informal conference to the Fire Service Standards and Certification division director to discuss informal disposition of the complaint(s).

(b) An examination may be challenged only on the basis of examination content, failure to comply with commission [Commission] rules by a certified training facility, or problems in the administration of the examination.

(c) The written request must identify the examinee, the specific examination taken, the date of the examination, and the basis of the appeal.

(d) An examinee who challenges the content of an examination must identify the subject matter of the question(s) challenged and is not entitled to review the examination due to the necessity of preserving test security.

(e) The request must be submitted within 30 days from the date the grade report is posted on the website.

(f) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the challenge within 30 days of the request or as soon as practical. The examinee may accept or reject the settlement recommendations of the commission [Commission] staff. If the examinee rejects the proposed agreement, the examinee must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

§401.23. Examination Waiver Request.

(a) An individual who is required to take a commission [Commission] examination [pursuant to §430.15 of this title (relating to Testing for Proof of Proficiency) or §439.17 of this title (relating to Testing for Certification Status)] may petition the commission [Commission] for a waiver of the examination if the person’s certificate or eligibility expired because of a good faith clerical error on the part of the individual or an employing entity.

(b) The waiver request must include a sworn statement together with any supporting documentation that evidences the applicant’s good faith efforts to comply with commission [Commission] requirements and that failure to comply was due to circumstances beyond the control of the certificate holder or applicant.

(c) Commission staff shall schedule a conference with the applicant in accordance with §401.41 of this title (relating to Preliminary Staff Conference) to discuss the waiver request within 30 days of the request, or as soon as practical. The applicant may accept or reject the settlement recommendations of the commission [Commission] staff. If the examinee rejects the proposed agreement, the applicant must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the action complained of.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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PROPOSED RULES August 17, 2012 37 TexReg 6247
SUBCHAPTER D. DISCIPLINARY PROCEEDINGS

37 TAC §401.31

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.


(a) If the commission [Commission] staff recommends administrative penalties or any other sanction pursuant to Chapter 445 of this title (relating to Administrative Inspections and Penalties) or §401.105 of this title, (relating to Administrative Penalties) for alleged violations of laws or rules administered or enforced by the commission [Commission] and its staff, the respondent may request a preliminary staff conference in accordance with §401.41 of this title (relating to Preliminary Staff Conference).

(b) Commission staff shall schedule a Preliminary Staff conference with the applicant in accordance with §401.41 of this title [relating to Preliminary Staff Conferences] to discuss the alleged violations of laws or rules within 30 days of the request or as soon as practical. The respondent may accept or reject the settlement recommendations of the commission [Commission] staff. If the respondent rejects the proposed agreement, the respondent must request a formal administrative hearing as described in Subchapter F of this chapter (relating to Contested Cases) within 30 days of the notice of the staff's recommended disciplinary action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Executive Director
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SUBCHAPTER E. PREHEARING PROCEEDINGS

37 TAC §§401.41, 401.43, 401.45, 401.47, 401.49

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.

§401.41. Preliminary Staff Conference.

(a) General. After receipt of preliminary notice of alleged violations of laws or rules administered or enforced by the commission and its staff, the holder of the certificate, applicant or regulated entity may request a conference with the commission's staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056.

(b) Representation. The certificate holder, applicant or regulated entity may be represented by counsel or by a representative of his or her choice. The commission shall be represented by one or more members of its staff and by commission [staff] legal counsel.

(c) Informal Proceedings. The conference shall be informal, and will not follow procedure established in Subchapter F of this chapter (relating to Contested Cases) for contested cases. The commission's representative(s) may prohibit or limit attendance by other persons; may prohibit or limit access to the commission's investigative file by the licensee, the licensee's representative, and the complainant, if present; and may record part or all of the staff conference. At the discretion of the commission's representative(s), the licensee, the licensee's representative, and the commission staff may question witnesses; make relevant statements; and present affidavits, reports, letters, statements of persons not in attendance, and such other evidence as may be appropriate.

(d) Settlement Conference. At the discretion of the commission's representative(s), the preliminary staff conference may be concluded, and a settlement conference initiated to discuss staff recommendations for informal resolution of the issues. Such recommendations may include any disciplinary actions authorized by law, including restitution, remedial actions, or such reasonable restrictions that may be in the public interest. Recommendations for administrative penalties or monetary forfeitures shall be made in accordance with §401.105 of this title (relating to Administrative Penalties). These recommendations may be modified by the commission's representative(s) based on new information, a change of circumstances, or to expedite resolution in the interest of protecting the public. The commission's representative(s) may also recommend that the investigation be closed or referred for further investigation.

(e) Proposed Consent Order. The licensees may accept or reject the settlement recommendations of the commission staff. If the licensee accepts the recommendations, the licensee shall execute a settlement agreement in the form of a proposed consent order as soon thereafter as practicable. If the licensee rejects the proposed agreement, the matter may be scheduled for a hearing as described in Subchapter F of this chapter [relating to Contested Cases].

(f) Approval of Consent Order. Following acceptance and execution of the settlement agreement recommended by staff, said proposed agreement shall be submitted to the executive director for approval. If the order is approved, it shall be signed by the executive director. If the proposed order is not approved, the licensee shall be so informed and the matter shall be referred to the commission staff for appropriate action to include dismissal, closure, further negotiation, further investigation, or a formal hearing.

§401.43. Prehearing Conferences.

The presiding hearings officer shall schedule prehearing conferences as necessary for the efficient management of the proceedings. The pre-
The presiding hearings officer shall conduct prehearing conferences for any appropriate purpose, including consideration of the following:

1. motions and other preliminary matters related to the proceeding, including notice, discovery, and procedural schedules;
2. settlement of the case, or clarification and simplification of the issues;
3. the necessity or desirability of amended pleadings;
4. the possibility of obtaining stipulations that would avoid the unnecessary introduction of evidence;
5. evidentiary matters, including a request for interim relief;
6. the specific procedures to be followed at the hearing;
7. the scheduling of the hearing on the merits; and
8. any other matters as may assist the disposition of the proceeding in a fair and efficient manner.

§401.45. Interim Orders.
The presiding hearings officer shall issue orders covering procedural and discovery matters, requests for interim relief, and such other matters as may aid in the conduct of the hearing and efficient and fair disposition of the proceeding. Interim orders may be written or stated orally on the record.

§401.47. Appeal of an Interim Order.

(a) Availability of Appeal. Appeals are available for any order of the presiding hearings officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or applications for rehearing prior to issuance of a report of a presiding hearings officer.

(b) Procedure for Appeal. If the presiding hearings officer intends to reduce an oral ruling to a written order, the presiding hearings officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the executive director as to matters within his or her jurisdiction shall be filed within five working days of the issuance of the written order or the appealable oral ruling. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

(c) Contents. An appeal shall specify the reasons why the interim order is unjustified or improper.

(d) Responses. Any response to an appeal shall be filed within five working days of the filing of the appeal.

(e) Motions for Stay. Pending a ruling by the executive director, the presiding hearings officer may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.

(f) Denial. The executive director shall rule on the interim order within 20 days of the filing of the appeal. If the executive director does not rule on the appeal within 20 days of its filing, or extend the time for ruling, the interim order is deemed approved and any granted stay is lifted. The appeal may be carried with the underlying case provided the executive director does not act upon the appeal within the time provided in this section.

(g) Reconsideration. The presiding hearings officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a decision on the appeal.

§401.49. Prehearing Statements.

(a) Prehearing Statements Required. Each party shall file a prehearing statement no later than three days before the start of a hearing unless the presiding hearings officer determines that such a requirement would add unjustified burden and expense to the proceeding, or that a different deadline should be imposed. The presiding hearings officer may impose sanctions provided in §401.103 of this title (relating to Discovery Sanctions) against any party who fails to comply with the requirement that a prehearing statement be filed.

(b) Contents of Prehearing Statement. Unless otherwise provided by order of the presiding hearings officer, the prehearing statement shall contain the following information:

1. a concise statement of the party's position in the proceeding;
2. a concise statement of each question of fact, law, or policy the party considers at issue;
3. a concise statement of the party's position on each issue identified pursuant to paragraph (2) of this subsection;
4. a statement of issues that have been resolved by agreement of the parties, including agreements that do not include all parties; and
5. a statement as to any requirement set forth in the prehearing order that cannot be complied with, the reasons for noncompliance, and such other information as will aid in achieving an orderly disposition of the proceeding.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Don Wilson
Executive Director
Texas Commission on Fire Protection
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SUBCHAPTER F. CONTESTED CASES

37 TAC §401.51

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.

§401.51. Preliminary Notice and Opportunity for Hearing.

(a) In General. Except as otherwise provided by law, the procedure for the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a certificate is governed by Government Code, Chapter 2001, pertaining to Administrative Procedures and by 1 TAC Chapter 155 (relating to Rules of Procedures) adopted by SOAH effective November 26, 2008 [January 2, 1998].

(b) Preliminary Notice. A revocation, suspension, annulment, or withdrawal of a certificate or license is not effective unless, before the institution of agency proceedings, the holder of the certificate receives preliminary notice of the facts or conduct alleged to warrant the

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intended action and an opportunity to show compliance with all requirements of law, as required by Government Code, §2001.054(c).

(c) Staff Conference. The holder of the certificate may request a conference with commission [the Commission’s] staff for the purpose of showing compliance with all requirements of law, or to discuss informal disposition of any complaint or contested case, pursuant to the Government Code, §419.906(c) and §2001.056, and the procedures provided in §401.41 of this title (relating to Preliminary Staff Conference).

(d) Request for Hearing. Except as otherwise provided by law, if an applicant's original application or request for certificate is denied, he or she shall have 30 days from the date of denial to make a written request for a hearing, and if so requested, the hearing will be granted and the provisions of the APA and this chapter with regard to contested cases shall apply.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Don Wilson
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SUBCHAPTER H. REINSTATEMENT
37 TAC §401.117

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed amendments implement Texas Government Code, §419.008 and §419.0082.

§401.117. Commission Action Possible upon Reinstatement.

After evaluation, the commission may:

(1) deny reinstatement of a suspended or revoked license or certificate;
(2) reinstate a suspended or revoked license or certificate and probate the practitioner for a specified period of time under specific conditions;
(3) authorize reinstatement of the suspended or revoked license or certificate;
(4) require the satisfactory completion of a specific program of remedial education approved by the commission; and/or; [and]
(5) reinstate a suspended or revoked license or certificate after verification through examination of required knowledge and skills appropriate to the suspended or revoked license or certificate. All applicable procedures shall be followed and all applicable fees shall be paid.

[45] require monitoring of the applicant’s work activity as specified by the commission.]

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information that is required for completion, and advise the applicant that the agency may disapprove an application that is not complete [within 30 days of its original receipt]. After one written notice of deficiency has been issued, another is not required for an application resubmitted in whole or in part with deficiencies.

(B) In addition to notice issued under subparagraph (A) of this paragraph, the agency may notify the applicant, in any manner, of deficiencies in the application.

(b) Processing of application. Within 60 days after receipt of a complete application, the agency shall:

(1) issue the certificate on payment of the appropriate fees and successful completion of all required examinations; or

(2) deny the certificate.

(c) Application disapproved. The agency may disapprove an application that is not complete within 30 days of its original receipt by the agency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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Don Wilson
Executive Director
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SUBCHAPTER K. HISTORICALLY UNDERUTILIZED BUSINESSES

37 TAC §401.131
The new rule is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed new rule implements Texas Government Code, §419.008 and §419.0082.

§401.131. Historically Underutilized Businesses.
The Texas Commission on Fire Protection adopts by reference Title 34, Part I, Chapter 20, Texas Procurement and Support Services, Subchapter B, Historically Underutilized Business Program, as promulgated by the Comptroller of Public Accounts.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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Don Wilson
Executive Director
Texas Commission on Fire Protection
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SUBCHAPTER J. CHARGES FOR PUBLIC RECORDS

37 TAC §401.129
The new rule is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.0082, which provides the commission the authority to adopt or amend rules.

The proposed new rule implements Texas Government Code, §419.008 and §419.0082.


(a) The Texas Commission on Fire Protection is subject to Texas Government Code, Chapter 552, Texas Public Information Act. The Act gives the public the right to request access to government information.

(b) The Texas Commission on Fire Protection adopts by reference Title 1, Part 13, Chapter 70, Cost of Copies of Public Information, as promulgated by the Office of the Attorney General.

(c) The executive director may waive or reduce a charge for copies when furnishing the information benefits to the general public.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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Don Wilson
Executive Director
Texas Commission on Fire Protection
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CHAPTER 403. CRIMINAL CONVICTIONS AND ELIGIBILITY FOR CERTIFICATION

37 TAC §§403.1, 403.3, 403.5, 403.9, 403.11, 403.15
The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 403, Criminal Convictions and Eligibility For Certification, §403.1, concerning Purpose; §403.3, concerning Scope; §403.5, concerning Access to Criminal History Record Information; §403.9, concerning Mitigating Factors; §403.11, concerning Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds; and §403.15, concerning Report of Convictions by an Individual or a Department.

The purpose of the proposed amendments is to make grammatical changes and other minor wording changes which will help clarify existing requirements. The proposed changes will also strengthen existing requirements to notify the commission of criminal convictions.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.
Mr. Baker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is to provide clear and concise rules regarding criminal convictions and the eligibility for certification by the agency.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the Texas Register to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.032, which provides the commission the authority to propose rules to establish qualifications for fire protection personnel; and §419.0325, which provides the commission the authority to obtain criminal history record information before certifying fire protection personnel.

The proposed amendments implement Texas Government Code, §§419.008, 419.032 and 419.0325.

§403.1. Purpose.

(a) The purpose of this chapter is to establish policy, procedures [guidelines] and criteria on the eligibility of persons with a criminal conviction for a certificate or renewal of a certificate issued by the Texas Commission on Fire Protection (the commission [Commission]) and to establish procedures for suspension, probation, revocation, or denial of a certificate held or applied for by persons with a criminal conviction pursuant to Chapter 53, Texas Occupations Code.

(b) The duties and responsibilities of persons who hold certifications issued by the commission [Commission] each involve matters that directly relate to public safety, specifically to the reduction of loss of life and property from fire. Thus, conduct involving the injury to a person or the destruction of property by fire, relates directly to the fitness of the individual to be fire protection personnel. Fire protection personnel often have access to areas not generally open to the public. The public relies on the honesty, trustworthiness, and reliability of persons certified by the commission [Commission]. Thus, crimes involving moral turpitude, including, but not limited to, fraud and dishonesty, are directly relevant. In addition, the ability of such persons to function unimpaired by alcohol or the illegal use of drugs, in dangerous or potentially dangerous circumstances, including, but not limited to, the operation of emergency vehicles is paramount in light of the duty to protect the health and safety of the public.

§403.3. Scope.

(a) The policy and procedures [guidelines] established in this chapter apply to a person who holds or applies for any certificate issued under the commission’s [Commission’s] regulatory authority contained in Government Code, Chapter 419.

(b) When a person is charged with, or convicted of a crime of a sexual nature, the conviction of which would require the individual to be registered as a sex offender under Chapter 62 of the Code of Criminal Procedure; or

(c) When a person engages in conduct that is an offense under Title 7 of the Texas Penal Code, or a similar offense under the laws of the United States of America, another state, or other jurisdiction, the person’s conduct directly relates to the competency and reliability of the person to assume and discharge the responsibilities of fire protection personnel. Such conduct includes, but is not limited to, intentional or knowing conduct, without a legal privilege, that causes or is intended to cause a fire or explosion with the intent to injure or kill any person or animal or to destroy or damage any property. The commission [Commission] may consider the person’s conduct even though a final conviction has not occurred and may:

(1) deny to a person the opportunity to be examined for a certificate;
(2) deny the application for a certificate;
(3) grant the application for a new certificate with the condition that a probationary suspension be placed on the newly granted certificate;
(4) refuse to renew a certificate;
(5) suspend, revoke or probate the suspension or revocation of an existing certificate; or
(6) limit the terms or practice of a certificate holder to areas prescribed by the commission [Commission].

(d) When a person’s criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission [Commission], the commission [Commission] may:

(1) deny to a person the opportunity to be examined for a certificate;
(2) deny the application for a certificate;
(3) grant the application for a new certificate with the condition that a probationary suspension be placed on the newly granted certificate;
(4) refuse to renew a certificate;
(5) suspend, revoke or probate the suspension or revocation of an existing certificate; or
(6) limit the terms or practice of a certificate holder to areas prescribed by the commission [Commission].

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission [Commission] is entitled to obtain criminal history record information maintained by the Department of Public Safety, or another law enforcement agency to investigate the eligibility of a person applying to the commission [Commission] for or holding a certificate.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

(1) a court order;
(2) with written consent of the person being investigated;
(3) in a criminal proceeding; or
(4) in a hearing conducted under the authority of the commission [Commission].

(c) Early review. A fire department that employs a person regulated by the commission [Commission], a person seeking to apply for a beginning position with a regulated entity, a volunteer fire department, or an individual participating in the commission [Commission] certification program may seek the early review under this chapter of the person’s present fitness to be certified. Prior to completing the requirements for certification, the individual may request such a review in writing by submitting the required forms and fee(s), [providing the person’s full name, date of birth and any additional identifying information requested by the Commission.] A decision based on an early
review does not bind the commission [Commission] if there is a change in circumstances.

§403.9. Mitigating Factors.

(a) In addition to the factors that must be considered under §403.7 of this title (relating to Criminal Convictions Guidelines), in determining the present fitness of a person who has been convicted of a crime, the commission [Commission] shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;
(2) the age of the person at the time of the commission of the crime;
(3) the amount of time that has elapsed since the person's last criminal activity;
(4) the conduct and work activity of the person prior to and following the criminal activity;
(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
(B) the sheriff or chief of police in the community where the person resides; and
(C) any other persons in contact with the convicted person.

(b) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission as required the recommendations of prosecution, law enforcement, and correctional authorities as required by statute and these rules upon request by the commission staff. The applicant shall upon request also furnish:

(1) a copy of the indictment, information or complaint;
(2) a copy of the judgement(s) or order(s) of the court adjudicating guilt, granting probation, community supervision, deferred adjudication, or discharge from probation or community supervision;
(3) a record of steady employment in the form of a letter from current or former employers;
(4) a record that the applicant has supported his or her dependents in the form of a letter from a person in the applicant's community with personal knowledge of the circumstances;
(5) evidence that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, in the form of copies of official records, documents, or a letter from the person's probation or parole officer where applicable concerning his or her current status; and
(6) a copy of the police or offense report(s).

§403.11. Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds.

(a) If the commission [Commission] Standards Division (the division) proposes to suspend, revoke, limit, or deny a certificate based on the criteria in this chapter, the division shall notify the individual per Government Code, Chapter 2001. [at his or her last known address as shown in the Commission's records, by registered or certified mail.]

The notice of intended action shall specify the facts or conduct alleged to warrant the intended action.

(b) If the proposed action is to limit, suspend, revoke, or refuse to renew a current certificate, or deny an application for a new certificate, a written notice of intended action shall comply with the preliminary notice requirements of Government Code §2001.054(c). The individual may request, in writing, an informal conference with the commission [Commission] staff in order to show compliance with all requirements of law for the retention of the certificate, pursuant to Government Code §2001.054(c). A written request for an informal staff conference must be submitted to the division director no later than 15 days after the date of the notice of intended action. If the informal staff conference does not result in an agreed consent order, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(c) If the individual does not request an informal staff conference or a formal hearing in writing within the time specified in this section, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

(d) If the commission [Commission] limits, suspends, revokes, or denies a certificate under this chapter, the executive director shall give the person written notice:

(1) of the reasons for the decision;
(2) that the person may appeal the decision of the executive director to the commission [Commission] in accordance with §401.63 of this title (relating to Appeals to the Commission) within 30 days from the date the decision of the executive director is final and appealable;
(3) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for judicial review of the evidence presented to the commission [Commission] and its decision; and that such petition must be filed with the court no later than 30 days after the commission [Commission] action is final and appealable.

§403.15. Report of Convictions by an Individual or a Department.

(a) A certificate holder must [shall] report to the commission [Commission], any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, within 14 days of the conviction date.

(b) A fire department or local government entity [regulated by the Commission] shall report to the commission [Commission], any conviction of a certificate holder [employed by the regulated entity] other than a minor traffic offense (class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has knowledge of, within 14 days of the conviction date.

(c) A certificate holder is subject to suspension, revocation or denial of any or all certifications for violation of the requirements of subsection (a) of this section. Each day may be considered a separate offense.

(d) A fire department or government entity regulated by the commission violating subsection (b) of this section may be subject to administrative penalties of up to $500. Each day may be considered a separate offense.

(e) Notification may be made by mail, e-mail, or in person to the Texas Commission on Fire Protection (TCFP) Austin office. TCFP Form #0014 shall be used.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.
CHAPTER 405. CHARGES FOR PUBLIC RECORDS

37 TAC §§405.1, 405.3, 405.5, 405.7, 405.9, 405.11, 405.15

(EDITOR’S NOTE: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Fire Protection (the commission) proposes the repeal of Chapter 405, Charges for Public Records, §405.1, concerning General Provisions Regarding Charges for Public Records; §405.3, concerning Definitions; §405.5, concerning Charges for Providing Copies of Public Information; §405.7, Access to Information Where Copies Are Not Requested; §405.9, Format for Copies of Public Information; §405.11, concerning Estimates and Waivers of Public Information Charges; and §405.15, concerning the Texas Commission on Fire Protection Charge Schedule.

The purpose of the proposed repeal is to streamline commission rules. The commission is proposing to adopt by reference Title 1, Part 3, Chapter 70, Cost of Copies of Public Information, as promulgated by the Office of the Attorney General into Chapter 401, Practice and Procedures, new Subchapter J, Charges for Public Records, in this issue of the Texas Register. The commission feels the content of Chapter 405 would be more appropriate in Chapter 401 of the agency’s rules.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed repeal is in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit from the passage is to provide clear and concise rules with regards to the administration, practice and procedures of the commission. There will be no effect on micro businesses, small businesses or persons required to comply with the repeal as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the Texas Register to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties.

The proposed repeal implements Texas Government Code, §419.008.

§405.3. Definitions.
§405.5. Charges for Providing Copies of Public Information.
§405.7. Access to Information Where Copies Are Not Requested.
§405.9. Format for Copies of Public Information.
§405.11. Estimates and Waivers of Public Information Charges.
§405.15. The Texas Commission on Fire Protection Charge Schedule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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TRD-201204022
Don Wilson
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3813

CHAPTER 407. ADMINISTRATION

37 TAC §407.1

(EDITOR’S NOTE: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Fire Protection or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Commission on Fire Protection (the commission) proposes the repeal of Chapter 407, Administration, §407.1, concerning Historically Underutilized Businesses.

The purpose of the proposed repeal is to streamline commission rules. The commission is proposing to adopt by reference Title 34, Part 1, Chapter 20, Texas Procurement and Support Services, Subchapter B, Historically Underutilized Business Program, as promulgated by the Comptroller of Public Accounts into Chapter 401, Practice and Procedures, new Subchapter K, Historically Underutilized Businesses, in this issue of the Texas Register. The commission feels the content of Chapter 407 would be more appropriate in Chapter 401 of the agency’s rules.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed repeal is in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit from the passage is to provide clear and concise rules with regards to the administration, practice and procedures of the commission. There will be no effect on micro businesses, small businesses or persons required to comply with the repeal as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed repeal may be submitted, in writing, within 30 days following the publication of this notice in the Texas Register to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The repeal is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties.

The proposed repeal implements Texas Government Code, §419.008.
The Texas Commission on Fire Protection (the commission) proposes an amendment to Chapter 421, Standards for Certification, §421.17, concerning Requirement to Maintain Certification. The purpose of the proposed amendment is to add specific language referencing the Texas Education Code, §57.491, regarding license renewal and default on student loans which all certifying and licensing state agencies must conform to.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendment is in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit from the passage is to provide clear and concise rules regarding renewal of certifications by an individual who is in default on any student loans identified by the Texas Guaranteed Student Loan Corporation. There will be no effect on micro businesses, small businesses or persons required to comply with the amendment as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendment may be submitted, in writing, within 30 days following the publication of this notice in the Texas Register to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendment is proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the commission the authority to establish minimum education, training, physical, and mental standards for admission to employment as fire protection personnel; and §419.034 and §419.0341, which provide the commission the authority to propose rules to establish requirements for renewing all certifications held by an individual.

The proposed amendment implements Texas Government Code, §§419.008, 419.022, 419.034, and 419.0341.


(a) All full-time or part-time employees of a fire department or local government who are assigned duties identified as fire protection personnel duties must maintain certification by the commission. [Commission] in the discipline(s) to which they are assigned for the duration of their assignment.

(b) In order to maintain the certification required by this section, the certificate(s) of the employees must be renewed annually by complying with §437.51[2] of this title (relating to Renewal Fees) and Chapter 441 of this title (relating to Continuing Education) of the commission [Commission's] standards manual.

(c) An individual whose certificate has been expired for one year or longer may not renew the certificate that was previously held. To obtain a new certification, an individual must meet the requirements in Chapter 439 of this title (relating to Examinations for Certification).

(d) The commission [Commission] will provide proof of current certification to individuals whose certification has been renewed.

(e) All certificate holders are subject to the requirements of §57.491 of the Texas Education Code regarding license renewal and default on student loans.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Don Wilson
Executive Director
Texas Commission on Fire Protection

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §§441.3, 441.5, 441.7, 441.11, 441.13, 441.15, 441.17, 441.19, 441.21

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 441, Continuing Education, §441.3, concerning Definitions; §441.5, concerning Requirements; §441.7, concerning Continuing Education for Structure Fire Protection Personnel; §441.11, concerning Continuing Education for Marine Fire Protection Personnel; §441.13, concerning Continuing Education for Fire Inspection Personnel; §441.15, concerning Continuing Education for Arson Investigator or Fire Investigator; §441.17, concerning Continuing Education for Hazardous Materials Technician; §441.19, concerning Continuing Education for Head of a Fire Department; and §441.21, concerning Continuing Education for Fire Service Instructor.

The purpose of the proposed amendments is to rename Track A and Track B continuing education as Level 1 and Level 2, thus clarifying confusion with A List and B List courses that are used as training credit for higher levels of certification. In addition, the commission also proposes amendments to reduce the "general"
continuing education requirement from 20 to 18 hours and mandating 2 hours of "discipline specific" continuing education for certifications held by an individual appointed to a certain discipline.

Mike Baker, Director of the Fire Service Standards and Certification Division, has determined that for each year of the first five-year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Baker has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is to provide clear and concise rules regarding continuing education for higher levels of certification as well as clarifying the specific number of continuing education hours needed for certification renewal depending on the discipline the individual is assigned to. There will be no effect on micro businesses, small businesses or persons required to comply with the amendments as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the Texas Register to Don Wilson, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mail to info@tcpf.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; §419.022, which provides the commission the authority to establish minimum education, training, physical, and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to propose rules to establish qualifications for fire protection personnel.

The proposed amendments implement Texas Government Code, §§419.008, 419.022, and 419.032.

§441.3. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Certification period.--That period from the time a certificate is obtained or renewed until it is time for the certificate to be renewed again. See §437.5 of this title (relating to Renewal Fees [renewal fees]) for the definition of certification period.

(2) Level 1 [Track A].--Training intended to maintain previously learned skills as stated in the commission certification curriculum manual for the certifications held.

(3) Level 2 [Track B].--Fire service training or education intended to develop new skills that are not contained in the commission's certification curriculum manual for certifications held.

§441.5. Requirements.

(a) Continuing education shall be required in order to renew certification [which has a continuing education requirement stated in this chapter].

(b) The continuing education requirement for renewal [of certification] shall consist of a minimum of 18 [20] hours of training to be conducted during the certification period. [Only 20 total hours of continuing education shall be required to renew all Texas Commission on Fire Protection certificates if any individual holds more than one certificate, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).] All documentation of training used to satisfy the continuing education requirements must be maintained for a period of three years from the date of the training. Continuing education records shall be maintained by the department in accordance with the Texas State Library and Archives Commission, State and Local Records Management Division, Records Schedule, Local Schedule (GR 1050-28), whichever is greater.

(c) Level 1 [Track A] training must be conducted by a certified instructor. Interactive computer-based continuing education training that is supervised and verified by a certified instructor is acceptable.

(d) The continuing education program of a regulated entity must be administered and maintained in accordance with commission rule by a certified instructor.

(e) No more than four hours per year in any one subject of Level 1 training [the appropriate chapter of the commission's Certification Curriculum Manual] may be counted toward the [20-hour] continuing education requirement for a particular certification [Track A].

(f) There shall be no "hour per subject limit" placed on Level 2 [Track B] courses, except that emergency medical courses shall be limited to four hours per year.

(g) The head of a fire department may select subject matter for continuing education appropriate for a particular discipline.

(h) The head of a fire department must certify whether or not the individuals whose certificates are being renewed have complied with the continuing education requirements of this chapter on the certification renewal document [application]. Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply.

(i) After notification from the commission of a failure to comply with continuing education requirements, an individual who holds a certificate is prohibited from performing any duties authorized by a required certificate until such time as the deficiency has been resolved and written documentation is furnished by the department head for approval by the commission, through its Fire Service Standards and Certification Division director. Continuing education hours obtained to resolve a deficiency may not be applied to the continuing education requirements for the current certification period.

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for a cumulative period of six months or longer due to a documented illness, injury, or activation to military service may be exempted from the continuing education requirement for the applicable renewal period(s). Such exemptions shall be reported by the head of the department to the commission at renewal time, and a copy kept with the department continuing education records for three years.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel appointed to that discipline, may be exempted from the continuing education requirement for the applicable renewal period(s). Commission staff shall determine the exemption using documentation of the illness or injury that cumulatively lasts six months or longer, which is provided by the individual and the individual's treating physician or by documentation of activation to military service.

(l) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a certificate not employed by a regulated entity must comply with the continuing education requirements for that discipline. [Only
§441.15. Continuing Education for Arson Investigator or Fire Investigator.

(a) A minimum of two hours of continuing [Continuing] education in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as arson investigation or fire investigation personnel and who are appointed to arson or fire investigation duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, [Track A, Track B] or a combination of the two.


(a) Eight [Ten] hours of continuing education in hazardous materials (technician level) will be required for individuals certified as a hazardous materials technician. This will be in addition to continuing education required by other sections of this chapter.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, [Track A or Track B] or a combination of the two.

§441.19. Continuing Education for Head of a Fire Department.

(a) A minimum of two hours of continuing [Continuing] education in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for personnel certified as head of a fire department and who are appointed as head of a department.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, [Track A or Track B] or a combination of the two.

§441.21. Continuing Education for Fire Service Instructor.

(a) A minimum of two hours of continuing [Continuing] education in addition to the continuing education requirements in §441.5(b) of this title (relating to Requirements) will be required for individuals certified as a fire service instructor and who are appointed to fire service instructor duties.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Level 1, Level 2, [Track A or Track B] or a combination of the two.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-201204025

Don Wilson

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3813

* * *

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER B. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §700.205

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.205, concerning procedures for requesting access to confidential information, in its chapter governing Child Protective Services (CPS). House Bill 3234, enacted by the 82nd Legislature, added Texas Family Code §264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by foster youth who are adults at the time of the request. The amendment to §700.205 deletes a sentence relating to the priority handling of requests for CPS records and refers instead to the new records redaction rule, §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?). Section 702.223 is also published in this issue of the Texas Register.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have notice of the priority order in which requests for confidential records are handled. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to TJ Wasden at (512) 929-6944 in DFPS's Records Management Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-461, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §264.0145, Texas Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

§700.205. Procedures for Requesting Access to Confidential Information.

(a) - (b) (No change.)

(c) Records will not be released under §700.203(b) - (e) of this title (relating to Access to Confidential Information Maintained by the Texas Department of Protective and Regulatory Services (TDPRS)) until the investigation of an allegation of child abuse or neglect is complete. Requests for records will be filled on a priority basis, as provided by §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?). [with a higher priority assigned to those requests related to the adoption of a child or to a pending administrative, civil, or criminal court hearing.]

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

TRD-201204113

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 16, 2012

For further information, please call: (512) 438-3437

CHAPTER 702. GENERAL ADMINISTRATION

SUBCHAPTER B. AGENCY RECORDS AND INFORMATION

40 TAC §702.223

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §702.223, concerning how does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release, in its General Administration chapter. House Bill 3234, enacted by the 82nd Legislature, added Texas Family Code §264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. New §702.223 establishes the order of priority for fulfilling requests for client records in the Child Protective Services (CPS), Child Care Licensing (CCL), and Adult Protective Services (APS) programs, including the priority order for the handling of requests from former foster youth as a stand-alone category of requests. Also in this issue of the Texas Register, DFPS is amending §700.205 of this title (relating to Procedures for Requesting Access to Confidential Information) and §705.7111 of this title (relating to When may case records be released under this subchapter?), which currently set similar priorities for client records in the CPS and APS programs, respectively. As amended, these two rules will refer to new §702.223 for information on how requests for records are prioritized.
Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have notice of the priority order in which requests for confidential records are handled. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed new section does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to TJ Wasden at (512) 929-6944 in DFPS's Records Management Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-461, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements §264.0145, Texas Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

§702.223. How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?

(a) In responding to requests for client records that require redaction to remove certain confidential information before release, department staff must work diligently to fulfill each request in a timely manner as possible, subject to the priorities set forth in this section. The department fulfills requests for client records in the following priority order, from highest to lowest priority ranking:

1. Records provided in response to a subpoena or court order that has been properly served on the department;
2. Records provided in response to discovery in a lawsuit to which the department is a party;
3. Records provided to a prospective adoptive family before an adoption may be consummated;
4. Records provided to a party or the administrative law judge in an Employee Misconduct Registry administrative hearing;
5. Records provided to a party or the administrative law judge in a hearing conducted by the State Office of Administrative Hearings;
6. Records provided to a duly authorized person documenting the results of a school investigation as required by §261.406, Texas Family Code;
7. Records provided to a party in an administrative review of investigative findings that is conducted by the department;
8. Records provided to an adult who was previously in the conservatorship of the department, if the request is for a copy of such adult's own "case record" as defined by §264.0145, Texas Family Code; and
9. Records provided to all other requesters entitled to receive the requested records, which are fulfilled in the order they are received.

(b) Notwithstanding subsection (a) of this section, the department reserves the right to expedite any request for records when the department determines that a delay in fulfilling the request may:

1. Jeopardize the health or safety of any person;
2. Cause any person to suffer undue hardship; or
3. Result in the department's failure to meet a mandatory deadline for production of the requested records as imposed by a court or administrative tribunal.

(c) Additional information on who is entitled to receive confidential client records is provided in the following chapters in Title 40, Texas Administrative Code:

1. Chapter 700 of this title (relating to Child Protective Services);
2. Chapter 705 of this title (relating to Adult Protective Services); and
3. Chapter 745 of this title (relating to Licensing).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

TRD-201204114
Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER C. CHILD ABUSE AND NEGLECT CENTRAL REGISTRY

40 TAC §§702.251, 702.253, 702.255, 702.257

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§702.251, 702.253, 702.255, and 702.257, concerning the Child Abuse and Neglect Central Registry, in its General Administration chapter. The purpose of the rules is to clarify which findings of child abuse and neglect are appropriately maintained in the DFPS Central Registry. This will provide
a clearer understanding of the Central Registry process for the general public and other stakeholders.

New §702.251 states that as required by §261.002 of the Texas Family Code, DFPS maintains the Central Registry, which is a registry of validated cases of child abuse or neglect that is a subset of information in IMPACT, DFPS's automated database system.

New §702.253: states (1) that the Central Registry contains the names of designated and sustained perpetrators of child abuse or neglect and the supporting investigation case records related to such findings; (2) the records are completed investigations with a disposition of "reason to believe" by Child Protective Services (CPS) or Child Care Licensing (CCL), or "confirmed" by Adult Protective Services (APS); and (3) lists the statutory references for the CPS, APS, and CCL investigations and the relevant rules that further describe how these investigations are conducted, including making validated findings, which then become part of the Central Registry.

New §702.255 states that investigations that result in a validated finding are maintained on the Central Registry for as long as the case file is retained by DFPS under the official Records Retention Schedule.

New §702.257 states that the information in the Central Registry is confidential and not available to the general public.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that there will be a clearer understanding of the Central Registry process for the general public and other stakeholders. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-3805 in DFPS's Legal Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-464, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement the Texas Family Code §261.002, which requires the department to establish and maintain a central registry of cases of abuse and neglect and to adopt rules as necessary to carry out this section.

§702.251. What is the Central Registry?
The Central Registry is a registry of validated cases of child abuse or neglect that is maintained by the Department, as required by Texas Family Code, §261.002. The registry is maintained as a subset of information in the DFPS automated database system entitled Information Management Protecting Adults and Children in Texas (IMPACT).

§702.253. What information does the Central Registry include?
The Central Registry contains the names of designated or sustained perpetrators found by the Department to have abused or neglected a child, and the supporting investigation case records relating to such findings. The Central Registry includes a subset of information provided to the Department by Child Protective Services (CPS) or Child Care Licensing (CCL), or "confirmed" by Adult Protective Services (APS). The types of investigations that may result in a disposition of "reason to believe" or "confirmed include:

1. CPS investigations conducted pursuant to Texas Family Code (TFC) §261.301, as further described in Chapter 700, Child Protective Services, Subchapter E of this title (relating to Intake, Investigation, and Assessment);
2. CPS investigations conducted pursuant to TFC §261.406, as further described in Chapter 700, Child Protective Services, Subchapter D of this title (relating to School Investigations);
3. APS investigations conducted pursuant to TFC §261.404, as further described in Chapter 711, Investigations in DADS and DSHS Facilities and Related Programs, Subchapter E of this title (relating to Conducting the Investigation); and
4. CCL investigations conducted pursuant to TFC §261.401 and Human Resources Code §42.044, as further described in Chapter 745, Licensing, Subchapter K of this title (relating to Inspections and Investigations).

§702.255. How long is investigation information relating to a validated child abuse or neglect case retained in the Central Registry?
Investigations that result in a "reason to believe" or "confirmed" finding are maintained in the Central Registry for as long as the investigation case file is retained by the Department under the Department's official Records Retention Schedule. When the case containing the investigation record is no longer retained, the central registry information is also deleted. The Department's Record Retention Schedule for CPS, APS, and CCL case records can be found at: http://www.dfps.state.tx.us/documents/about/pdf/RecordRetentionSchedule.pdf.

§702.257. Is the information in the Central Registry available to the general public?
No. The information stored in the Central Registry is confidential and may be released by the Department only as provided by state and federal law and Department rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204072
CHAPTER 705. ADULT PROTECTIVE SERVICES
SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §705.7111

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §705.7111, concerning when may case records be released under this subchapter, in its Adult Protective Services (APS) chapter. House Bill 3234, enacted by the 82nd Legislature, added Texas Family Code §264.0145, which requires DFPS to establish guidelines by rule for assigning priorities to requests for the redaction and release of confidential client case records, including records requested by former foster youth who are adults at the time of the request. The amendment to §705.7111 deletes a sentence relating to the priority handling of requests for APS records and refers instead to the new records prioritization rule, §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?). Section 702.223 is also published in this issue of the Texas Register.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will have notice of the priority order in which requests for confidential records are handled. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to TJ Wasden at (512) 929-6944 in DFPS's Records Management Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-461, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §264.0145, Texas Family Code, which requires the department to adopt rules concerning the prioritization of requests for client case records.

§705.7111. When may case records be released under this subchapter?

(a) - (b) (No change.)

(c) Requests for records will be filled on a priority basis, as provided by §702.223 of this title (relating to How does the department prioritize fulfilling requests for copies of confidential client records that require redaction prior to their release?). [with a higher priority assigned to requests related to a pending administrative, civil, or criminal court hearing]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 6, 2012.

TRD-201204115
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

CHAPTER 727. LICENSING OF MATERNITY FACILITIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of Chapter 727, Licensing of Maternity Facilities, consisting of §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111, 727.201, 727.203, 727.205, 727.207, 727.301, 727.303, 727.305, 727.401, 727.403, 727.405, 727.407, 727.409, and 727.411. The purpose of the repeals is to implement Senate Bill (S.B.) 1178, 82nd Legislature, which deleted references to and definitions of maternity homes as a facility licensed and regulated by DFPS. As set forth in S.B. 1178, beginning September 1, 2012, all maternity homes will either: (1) serve only adults in an unregulated setting; or (2) obtain a residential child-care facility license, if the maternity home wishes to continue serving clients younger than 18 years old. Also in this issue of the Texas Register, DFPS is proposing changes to Chapter 745, Licensing, to repeal the additional maternity home minimum standards and delete all references to maternity homes.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.
Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that Child Care Licensing will focus its efforts on regulating businesses that serve children, not adults, as some maternity homes only serve adult clients. As outlined in S.B. 1178, if a licensed maternity home chooses to serve children after September 1, 2012, the maternity home can apply to convert their license to a residential child-care facility license through an abbreviated application and licensure process without paying any application or license fees. Continuing to regulate the care of children in these facilities, while allowing for an abbreviated licensure conversion process, will ensure that children are still protected in out-of-home care while minimizing or eliminating the impact on businesses. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any businesses and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code. Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-465, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

SUBCHAPTER A. STRUCTURE OF A MATERNITY HOME

40 TAC §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111

(Reviewer's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§727.101. Legal Basis for Operation.

§727.103. Governing Body of the Maternity Home.

§727.105. General Administration.

§727.107. Fiscal Accountability.


§727.111. Serious Incident Reports.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

TRD-201204073

Gerry Williams
General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 16, 2012

For further information, please call: (512) 438-3437

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SUBCHAPTER B. MATERNITY HOME PERSONNEL

40 TAC §§727.201, 727.203, 727.205, 727.207

(Reviewer's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§727.201. Personnel Policies.

§727.203. General Personnel Requirements.

§727.205. Personnel Qualifications and Responsibilities.

§727.207. Training Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

TRD-201204074

Gerry Williams
General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 16, 2012

For further information, please call: (512) 438-3437

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SUBCHAPTER C. SERVICE MANAGEMENT

40 TAC §§727.301, 727.303, 727.305

(Reviewer's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the
The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§727.403. Housing.
§727.405. Health Care.

§727.407. Other Services.
§727.409. Client Rights.
§727.411. Client Records.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204076
Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER D. CLIENT SERVICES

40 TAC §§727.401, 727.403, 727.405, 727.407, 727.409, 727.411

(Editors note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§727.403. Housing.
§727.405. Health Care.

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§744.105 and §744.501, concerning what do certain words and terms mean in this chapter and what written operational policies must I have, in its Minimum Standards for School-Age and Before or After-School Programs chapter. The purpose of the amendments is to define health checks and require facilities to add procedures to their operation’s policies if they conduct health checks on children in care. Health checks are conducted to identify potential concerns about a child’s health, such as signs or symptoms of illness and injury, in response to changes in the child’s behavior since the last date of attendance.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that consumers of child-care services will be informed about a child-care operation’s policies and procedures relating to health checks. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Penni Massingill at (512) 438-2366 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on
the proposal may be submitted to Texas Register Liaison, Legal Services—463, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §744.105

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§744.105. What do certain words and terms mean in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. In addition, the following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (26) (No change.)

(27) Health check—A visual or physical assessment of a child to identify potential concerns about a child’s health, including signs or symptoms of illness and injury, in response to changes in the child’s behavior since the last date of attendance.

(28) [229] Health-care professional—A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(29) [229] Individual activities—Opportunities for the child to work independently or to be away from the group, but supervised.

(30) [229] Inflatable—An amusement ride or device, consisting of air-filled structures designed for use, as specified by the manufacturer, that may include but not be limited to bounce, climb, slide, or interactive play. They are made of flexible fabric, are kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(31) [240] Janitorial duties—Those services that involve cleaning and maintenance above that which is required for the continuation of the child-care operation. Cleaning and maintenance include such duties as cleansing carpets, washing cots, sweeping, vacuuming, or mopping a classroom.

(32) [241] Multi-site operations—Child-care facilities with separate permits that share the same governing body, and may have centralized business functions, record keeping, and leadership.

(33) [241] Natural environment—Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a school-age child with a disability would be a play group or program, or whatever setting exists for school-age children without disabilities.

(34) [244] Operation director—A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.

(35) [244] Operation location—The street address of the operation and the lot or lots on which the building or buildings are located.

(36) [244] Pre-service training—Training given to a person who has no previous experience in regulated child-care operations, and relevant training in specified skills development offered by the operation.

(37) [244] Program—The services and activities provided by an operation.

(38) [244] Program director—A director who oversees your program at multiple operations and supervises a site director at each operation.

(39) [244] Regularly—On a recurring, scheduled basis.

(40) [244] Safety belt—A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(41) [244] School-age child—A child who is five years of age and older, and who will attend school at or away from the operation in August or September of that year.

(42) [244] School-age program—An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children who attend pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.

(43) [244] Single-use area—Area not routinely used for children’s activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building.

(44) [244] Site director—A director who has on-site responsibility at a specific operation but who is supervised by a program director.

(45) [244] Special care needs—A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including but not limited to, movement of large and/or small muscles, learning, talking, communicating, self-help, social, emotional, seeing, hearing, and breathing.

(46) [245] State or local fire marshal—A fire official designated by the city, county, or state government.

(47) [245] State or local sanitation official—A sanitation official designated by the city, county, or state government.

(48) [245] Universal precautions—An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(49) [245] Water activities—Related to the use of splashing pools, wading pools, swimming pools, or other similar bodies of water.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204062
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 4. OPERATIONAL POLICIES

40 TAC §744.501
The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§744.501. What written operational policies must I have?
You must develop written policies that at a minimum address each of the following:

(1) - (19) (No change.)

(20) Instructions on how a parent may contact the local Licensing office, DFPS child abuse hotline, and DFPS website; [and]

(21) Emergency preparedness plan; [and] [-]

(22) Procedures for conducting health checks, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204062
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATIONS

40 TAC §744.305
The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §744.305, concerning what other situations require notification to Licensing, in its Minimum Standards for School-Age and Before or After-School Programs chapter. The purpose of the amendment is to make the rule consistent with changes concerning background checks proposed in Chapter 745, Licensing. Those rules are also published in this issue of the Texas Register.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection for children resulting from improved decision-making by operations concerning their employees. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Ryan Malsbary at (512) 438-5836 in DFPS’s Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-462, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.056.

§744.305. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) - (3) (No change.)

(4) A person for which you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime; [A county or district attorney accepts an indictment or information regarding an official complaint against an employee alleging commission of any crime]
noted in §245.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?);]

(5) - (6) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204054
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§745.1, 745.8001, and 745.8003; and amendments to §§745.21, 745.31, 745.37, 745.41, 745.243, 745.273, 745.345, 745.349, 745.509, and 745.8903, concerning maternity homes, in its Licensing chapter. The purpose of the repeals and amendments is to implement Senate Bill (S.B.) 1178, 82nd Legislature, which deleted references to and definitions of maternity homes as a facility licensed and regulated by DFPS. As set forth in S.B. 1178, beginning September 1, 2012, all maternity homes will either: (1) serve only adults in an unregulated setting; or (2) obtain a residential child-care facility license, if the maternity home wishes to continue serving clients younger than 18 years old. Also in this issue of the Texas Register, DFPS is repealing Chapter 727, Licensing of Maternity Facilities.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enacting or amending the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enacting the sections will be that Child Care Licensing will focus its efforts on regulating businesses that serve children, not adults, as some maternity homes only serve adult clients. As outlined in S.B. 1178, if a licensed maternity home chooses to serve children after September 1, 2012, the maternity home can apply to convert their license to a residential child-care facility license through an abbreviated application and licensure process without paying any application or license fees. Continuing to regulate the care of children in these facilities, while allowing for an abbreviated licensure conversion process, will ensure that children are still protected in out-of-home care while minimizing or eliminating the impact on businesses. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed repeals and amendments do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS’s Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-465, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 1. PRECEDENCE

40 TAC §745.1

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.1. What is the relationship between this chapter and the Residential Child Care Licensing chapters?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204077
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC
§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.21. What do the following words and terms mean when used in this chapter?

The following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

(1) - (5) (No change.)

(6) Child-care facility—An establishment subject to regulation by Licensing which provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the establishment operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies, listed family homes, or employer-based child care[; or maternity homes].

(7) - (24) (No change.)

(25) Minimum standards--The rules contained in Chapters [722 of this title relating to Licensing of Maternity Facilities] 743 of this title (relating to Minimum Standards for Shelter Care), 744 of this title (relating to Minimum Standards for School-Age and Before or After-School Programs), 746 of this title (relating to Minimum Standards for Child-Care Centers), 747 of this title (relating to Minimum Standards for Child-Care Homes), 748 of this title (relating to General Residential Operations [and Residential Treatment Centers]), 749 of this title (relating to Child-Placing Agencies), 750 of this title (relating to Independent Foster Homes), and Division 11 (relating to Employer-Based Child Care) of Subchapter D of this chapter (relating to Application Process)[; and Subchapter I of this chapter relating to Maternity Home Minimum Standards], which are minimum requirements for permit holders that are enforced by DFPS to protect the health, safety and well-being of children.

(26) (No change.)

(27) Operation--A person or entity offering a program that may be subject to Licensing’s regulation. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, or employer-based child care[; or maternity home].

(28) (No change.)

(29) Permit--A license, certification, registration, listing, compliance certificate, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, or employer-based child care[; or maternity home]. This also includes an administrator’s license.

(30) - (37) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §§745.31, 745.37, 745.41

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.31. What operations does the Licensing Division regulate?

We regulate child day care and residential child care, including [maternity homes and] child-placing agencies, unless we determine your operation is exempt from regulation.

§745.37. What specific types of operations does Licensing regulate?

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Child-placing agencies [Maternity homes, child-placing agencies, and foster homes verified by a child-placing agency are included in the residential child-care chart.

(1) - (2) (No change.)

(3) Types of Residential Child-Care Operations.

Figure: 40 TAC §745.37(3)

§745.41. How do I start a child day care or residential child-care operation, including a [maternity home, or] child-placing agency?

You must apply for a permit, unless we determine you are exempt from regulation. See more about applying for a permit in Subchapter D of this chapter (relating to Application Process). See more about being exempt from regulation in Subchapter C of this chapter (relating to Operations that are Exempt from Regulation).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency’s legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 16, 2012

For further information, please call: (512) 438-3437
SUBCHAPTER D. APPLICATION PROCESS
DIVISION 3. SUBMITTING THE
APPLICATION MATERIALS

40 TAC §745.243

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.243. What does a completed application for a permit include?

Application forms vary according to the type of permit. We will provide you with the required forms. Contact your local Licensing office for additional information. The following table outlines the requirements for a completed application:

Figure: 40 TAC §745.243

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437

DIVISION 4. PUBLIC NOTICE AND HEARING
REQUIREMENTS FOR RESIDENTIAL
CHILD-CARE OPERATIONS

40 TAC §745.273

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.273. Which residential child-care operations must meet the public notice and hearing requirements?

(a) (No change.)

(b) All other residential child-care operations \[not including maternity homes\] applying for a permit to operate or requesting to amend their license to increase capacity must meet the public notice and hearing requirements if they are located in a county with a population of less than 300,000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437

DIVISION 7. THE DECISION TO ISSUE OR DENY A PERMIT

40 TAC §745.345, §745.349

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.345. When does Licensing issue initial licenses?

We must issue an initial license when you meet our Licensing minimum standards, rules, and statutes and one of the following situations exists:

(1) You are not currently in operation but meet the appropriate minimum standards, except those with which compliance cannot be determined in the absence of children \[or maternity home clients\];

(2) - (4) (No change.)

(5) Change in ownership results in changes in policy and procedure or in the staff who have direct contact with the children \[or maternity home clients\]. (See §745.437 of this title (relating to What is a change in the ownership of an operation?).)

§745.349. What if I am not able to care for children during the initial period?

We cannot determine compliance with all the Licensing minimum standards unless you have children \[or maternity home clients\] in care. If you do not have children \[or maternity home clients\] in care during the initial license period:
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER E. FEES
40 TAC §745.509
The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.509. What fees must I pay to apply for and maintain a license for an operation?
The following chart contains fees required for licenses, (including child day-care and residential child-care operations, and child-placing agencies[, and maternity homes]), when the fees are due, and the consequences for failure to pay the fees on time:
Figure: 40 TAC §745.509
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER I. MATERNITY HOME MINIMUM STANDARDS
40 TAC §745.8001, §745.8003
(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.8001. What immunizations are children in my care required to have?
§745.8003. Where can I find this information?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER N. ADMINISTRATOR LICENSING
DIVISION 1. OVERVIEW OF CHILD-CARE ADMINISTRATOR'S LICENSING
40 TAC §745.8903
The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements §16 and §17(b), S.B. 1178, 82nd Regular Session, Texas Legislature.

§745.8903. What is a child-placing agency administrator?
A child-placing agency administrator is a person who:

(1) Supervises and exercises direct control over a child-placing agency, as defined in §745.373(3)(D) [§745.373(3)(E)] of this title (relating to What specific types of operations does Licensing regulate?); and

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.
The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§745.651, 745.655, 745.657, 745.691, 745.693, 745.695, and 745.696; new §§745.651, 745.655, 745.656, 745.657, 745.686, 745.688, 745.695, and 745.696; and amendments to §§745.653, 745.659, 745.661, 745.663, 745.685, 745.687, 745.689, 745.699, 745.701, and 745.703, in its Licensing chapter. The purpose of the repeals, new sections, and amendments is to establish consistency in the background check process, to provide a more organized and timely risk evaluation process, and to make both processes more easily understood by the public. The primary change is to replace the crimes that are currently enumerated extremely broadly in rule with charts that specifically enumerate crimes that are monitored by Licensing. These charts will be specific to types of operations and will include information on whether a conviction permanently or temporarily bars a person from being present at an operation while children are in care, whether a person is eligible for a risk evaluation, and whether a person who is eligible for a risk evaluation may be present at the operation pending the outcome of the risk evaluation. The charts will be reviewed and updated every year and published in the "In Addition" section of the Texas Register every January. A summary of the changes is described below:

Section 745.651 is repealed and proposed as new. New §745.651: (1) deletes the listing of criminal convictions and adds a reference to the three charts on the DFPS website that contain criminal convictions and information on whether a conviction permanently or temporarily bars a person from being present at one of the relevant operations while children are in care, whether a person is eligible for a risk evaluation, and whether a person who is eligible for a risk evaluation may be present at the operation pending the outcome of the risk evaluation; (2) states the three charts will be reviewed and updated every year and published in the Texas Register every January; (3) clarifies that for any felony crime within the last 10 years that is not enumerated in the chart, a person must have an approved risk evaluation before being present at an operation while children are in care; and (4) clarifies that the crimes in the chart also apply to similar other state and federal crimes. In addition, new §745.651 replaces the information that was contained in repealed rules §745.657 and §745.693.

The amendment to §745.653 changes the title reference to §745.651.

New §745.655 clarifies that a successfully completed deferred adjudication is not considered a conviction for criminal background check purposes except when applying for a permit.

New §745.656 clarifies a person who is required to register as a sex offender cannot be present at an operation while children are in care.

New §745.657 contains information from repealed §§745.655, 745.657, and 745.695. The new rule: (1) adds information to (3) and (4) in the chart allowing a person’s presence at an operation pending a risk evaluation “if the person continued to work at the operation pending the outcome of due process for the designated finding because we had not determined the person’s presence at the same operation was an immediate threat or danger to the health or safety of children;” (2) clarifies that for background check purposes a finding of abuse or neglect from another state will be treated the same as a sustained DFPS finding of abuse or neglect; and (3) adds eligibility for a risk evaluation for a physical abuse finding if the finding is more than five years old and the prospective foster or adoptive parent is related to or has a significant longstanding relationship with the foster or adoptive child.

The amendment to §745.659 updates the rule titles cited in the rule and clarifies the rule language.

The amendment to §745.661 clarifies that the operation may need to restrict a person’s duties after notification from Licensing, since §745.688 now clarifies that Licensing may place conditions or restrictions on a person’s presence at an operation pending the outcome of a risk evaluation.

The amendment to §745.683 clarifies the titles of the individuals responsible for submitting a risk evaluation and adds that a sole proprietor who is an applicant for any type of permit must request his or her own risk evaluation.

The amendment to §745.685 clarifies the language to be more consistent with new §745.686, which specifies the time frames for requesting a risk evaluation.

New §745.686: (1) adds a seven-day time frame for requesting a risk evaluation and a 14-day time frame for completing a risk evaluation packet; (2) allows two 14-day extensions relating to the submission of a risk evaluation packet for “good cause;” (3) adds a consequence for not meeting the time frames. If the requester does not meet the time frames, the requester can continue to pursue a risk evaluation but the person subject to the risk evaluation may not continue to be present at the operation pending the risk evaluation; (4) includes a 14-day time frame for the department to determine whether or not a risk evaluation packet is complete and to notify the operation of the status of the packet; and (5) includes a 21-day time frame for DFPS to make a determination on a risk evaluation after accepting a completed risk evaluation packet. In addition, §745.691 is repealed because the information is now contained in this rule.

The amendment to §745.687: (1) clarifies the language to be more consistent with what the Centralized Background Check Unit (CBCU) is currently asking for via Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Finding; and (2) adds the requirement of “any additional items requested by the CBCU Manager to assist with the determination of risk.”

New §745.688 adds Licensing’s authority to place restrictions or conditions on a person’s presence at an operation pending the outcome of a risk evaluation.

The amendment to §745.689: (1) clarifies the language to be more consistent with what the CBCU is currently asking for via Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Finding; (2) adds the requirement for additional information regarding the relationship of the foster or adoptive parents and the child, if any person is eligible for a risk
evaluation and it is a relative foster or adoptive placement or the foster or adoptive placement has a significant longstanding relationship with the child; and (3) adds the requirement of "any additional items requested by the CBCU Manager to assist with the determination of risk."

New §745.695: (1) indicates a licensed administrator must comply with the criminal history requirements in §745.651(a)(1); (2) adds that in addition to §745.651(a)(1), licensed administrators are also monitored for financial crimes. This includes misdemeanors and felonies. Felonies result in a 10 year bar; and (3) indicates a licensed administrator must comply with Central Registry requirements in new §745.657. Also, information from repealed §745.696 is contained in this rule.

New §745.696 clarifies how criminal history or a Central Registry finding may affect a person's ability to have an administrator's license or a licensed administrator's ability to be present at a particular operation, including if a person: (1) has a criminal history or Central Registry finding that bars the person from being present at an operation while children are in care, then the person is prohibited from being a licensed administrator; (2) has a felony conviction of a financial crime within the last 10 years, then the person is prohibited from being a licensed administrator; (3) has a felony conviction of a financial crime older than 10 years or any misdemeanor conviction of a financial crime, then the person is not prohibited from being a licensed administrator. However, Licensing may place restrictions on the person's license, and the person may not be present at the operation while children are in care until the operation requests a risk evaluation for the person and it is approved; and (4) If a person has a criminal history or Central Registry finding that only requires a risk evaluation, then the person is not prohibited from being a licensed administrator. However, Licensing may place restrictions on the person's license, and the person may not be present at the operation while children are in care until the operation requests a risk evaluation for the person and it is approved.

The amendment to §745.699 makes the language more consistent with §745.701.

The amendment to §745.701: (1) clarifies the language for when a person arrested or charged with a crime may be present at an operation while children are in care; and (2) adds subsection (b) for those persons arrested or charged with a crime for which the person would be entitled to a risk evaluation if convicted. This subsection establishes Licensing's authority to place conditions or restrictions on such a person's presence at the operation while children are in care pending the resolution of the criminal matter as Licensing finds necessary to protect the health and safety of children.

The amendment to §745.703 corrects titles to rules that are referenced in this rule.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be: (1) a clearer understanding of the specific crimes that Licensing monitors for in the background check process; (2) a more organized and timely risk evaluation process; (3) current and accurate information regarding the risk evaluation process for the public's access on the DFPS website; (4) a clearer understanding of the risk evaluation process by stakeholders; (5) an enhanced consistency across both the residential child-care and child day-care programs; and (6) greater protection for children resulting from improved decision-making by operations concerning their employees. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed repeals, new sections, and amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Ryan Malsbary at (512) 438-5836 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-462, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §§745.651, 745.655, 745.657

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of Family and Protective Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042 and §42.056.

§745.651. What types of criminal convictions may preclude a person from being present in an operation?

§745.655. What types of central registry findings may preclude a person from being present in an operation?

§745.657. What is the consequence of having one of these types of criminal convictions or central registry findings?

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

TRD-201204055
40 TAC §§745.651, 745.653, 745.655 - 745.657, 745.659, 745.661

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042 and §42.056.

§745.651. What types of criminal convictions may affect a person’s ability to be present at an operation?

(a) A felony or misdemeanor conviction under Texas law, the laws of another state, or federal law may affect a person’s ability to be present at an operation. There are three charts with information regarding specific crimes that may affect a person’s ability to be present at an operation. Each chart specifies whether a conviction permanently or temporarily bars a person from being present at one of the relevant operations while children are in care, whether a person is eligible for a risk evaluation, and whether a person who is eligible for a risk evaluation may be present at the operation pending the outcome of the risk evaluation. The three charts are:

(1) Licensed or Certified Child Care Operations: Criminal History Requirements;

(2) Foster or Adoptive Placements: Criminal History Requirements; and

(3) Registered Child Care Homes and Listed Family Homes: Criminal History Requirements.

(b) The three charts listed in subsection (a) of this section will be reviewed and updated annually, published every January as an “In Addition” document in the Texas Register, and are available on the DFPS website at www.dfps.state.tx.us/Child_Care/.

(c) For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section and is within 10 years of the date of conviction, the person must have an approved risk evaluation prior to being present at the operation while children are in care.

(d) In addition to the criminal offenses that are specifically enumerated in each chart listed in subsection (a) of this section and felony offenses described in subsection (c) of this section, substantially similar federal offenses and offenses in other states will be treated the same as the similar Texas offense.

§745.653. If a criminal history check reveals a criminal conviction other than those enumerated in the relevant chart listed in §745.651 of this title (relating to What types of criminal convictions may affect a person’s ability to be present at an operation?), will Licensing notify me of the results?

Yes, we will notify you, but you will not be required to take any action.

§745.655. Do criminal convictions include deferred adjudication for an offense that may affect a person’s ability to be present at an operation?

(a) Except as provided under subsection (b) of this section, a criminal conviction includes deferred adjudication only if the court has not dismissed the proceedings and discharged the person with the deferred adjudication after successful completion of any community supervision, also known as probation.

(b) Convictions include deferred adjudication regardless of whether the court has dismissed the proceedings and discharged the person with the deferred adjudication when the person is an applicant for a permit.

§745.656. Will a requirement that a person register with the Texas Sex Offender Registry affect the person’s ability to be present at an operation?

Yes, a person who is required to register as a sex offender in Texas may not be present at an operation while children are in care.

§745.657. What types of Central Registry findings may affect a person’s ability to be present at an operation?

(a) Except for a person described in subsection (b) of this section, the following chart lists the types of Central Registry findings that may affect a person’s ability to be present at an operation. The chart specifies whether a person with a finding is barred from being present at an operation or is eligible for a risk evaluation, and whether a person eligible for a risk evaluation may be present at an operation pending the outcome of the risk evaluation:

Figure: 40 TAC §745.657(a)

(b) A prospective foster or adoptive parent, or any person that is required to undergo a background check because of the foster or adoptive parent application, is eligible for a risk evaluation for a sustained finding of physical abuse if:

(1) It has been more than five years since the date of the physical abuse finding; and

(2) The prospective foster or adoptive parent is related to or has a significant longstanding relationship with the foster or adoptive child.

§745.659. What will happen if a person at my child-care operation has a criminal conviction or a Central Registry [central registry] finding?

We will notify the child-care operation in writing:

(1) Of any criminal conviction enumerated in the relevant chart listed under §745.651 of this title (relating to What types of criminal convictions may affect a person’s ability to be present at an operation?), and any sustained Central Registry [central registry] finding listed in §745.657 of this title relating to (What types of Central Registry findings may affect a person’s ability to be present at an operation?) §745.655(a) of this title (relating to What types of Central Registry findings may affect a person’s ability to be present at an operation?), including [whether]:

(A) Whether this [This] conviction or sustained finding permanently bars or temporarily bars this person from being present at an operation while children are in care, or whether you may request a risk evaluation for this person; and
(B) (No change.)

(2) Of any Central Registry finding of child abuse or neglect that is not sustained, where we have determined the presence of the person at an operation poses an immediate threat or danger to the health or safety of children [central registry finding listed in §745.655(b) of this title]. The notification letter will inform you that this person has not at this time had any due process regarding this matter. However, if we determine that the person [he] is an immediate threat or danger to the health or safety of children, you must immediately remove the person [him] from contact with children. We will subsequently notify your operation of any future decisions regarding this matter including whether the person may have contact with children.

§745.661. What must I do after Licensing notifies me that a person at my operation has one of these types of criminal convictions or Central Registry [central registry] findings?

You must take appropriate action, which may include immediately removing this person from your child-care operation while the children are in care, restricting the person's duties, and/or requesting a risk evaluation for this person. Your decision in this matter should be based upon the information provided to you, as specified in §745.659 of this title (relating to What will happen if a person at my child-care operation has a criminal conviction or a Central Registry [central registry] finding?).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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DIVISION 4. EVALUATION OF RISK
BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §§745.683, 745.685 - 745.689, 745.695, 745.696, 745.699, 745.701, 745.703

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC §42.042 and §42.056.

§745.683. Who is responsible for submitting a request for a risk evaluation?

(a) If the person with the criminal conviction or Central Registry [central registry] finding is an independent foster home parent, a registered child-care home permit holder, [caregiver, or] a listed family home permit holder, or any sole proprietor that is an applicant for any type of permit [caregiver], then the person [he] must request his own [the] risk evaluation [for himself];

(b) If the person with the criminal conviction or Central Registry [central registry] finding is a child-placing agency foster parent, adoptive parent, or the non-client child of the foster or adoptive home, then the child-placing agency must request the risk evaluation;

(c) If the person with the criminal conviction or Central Registry [central registry] finding is a licensed [child-care] administrator, then the child-placing agency or [the] general residential operation [residential treatment center] must request the risk evaluation; and

(d) For everyone else, the governing body, director, designee, independent foster home parent, or family home permit holder [caregiver, as appropriate, must request the risk evaluation.

§745.685. How do I submit a request for a risk evaluation?

You must submit a completed risk evaluation [complete the risk evaluation form, attach the appropriate documentation, and send the form back] to the DFPS Centralized Background Check Unit. The evaluation packet must include the completed risk evaluation form and all required supporting documentation. [If you have been notified that a person who was the subject of the background check may continue to work or be present in child-care pending a risk evaluation, you must return the completed form to us within 21 calendar days.]

§745.686. What are the time frames for requests for a risk evaluation?

(a) If you have been notified that a person who was the subject of the background check may continue to work or be present at an operation pending a risk evaluation, then:

(1) You must notify the Centralized Background Check Unit (CBCU) that you intend to request a risk evaluation within seven calendar days of when you receive notification from CBCU that the person may continue to work or be present at the operation pending a risk evaluation; and

(2) You must return the completed risk evaluation packet to the CBCU within 14 calendar days after you notify CBCU of your intent to request a risk evaluation. However, you may request two 14-calendar-day extensions for good cause.

(b) DFPS has 14 calendar days to review the paperwork submitted and notify you in writing that your risk evaluation is either:

(1) Complete and accepted for processing; or

(2) Incomplete. The notification letter will explain what is needed to complete the packet.

(c) If your risk evaluation packet is returned as incomplete, you have one additional 14-calendar-day period to submit the information needed to complete the packet.

(d) If you do not meet the timeframes in subsection (a) or (c) of this section for compliance with the request for a risk evaluation, you may continue with the risk evaluation process. However, the person who is the subject of the background check may not continue to be present at an operation pending the outcome of the risk evaluation.

(e) Once a risk evaluation packet has been accepted by DFPS as complete, then DFPS has 21 calendar days to make a determination on the risk evaluation. DFPS may exceed this time frame for good cause.
§745.687. What must I include in my request for a risk evaluation based on criminal history?

You must include the following:

(1) A completed Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Findings [form];

(2) A valid rationale from the operation's director, owner, operator, or administrator explaining why the person who has the criminal history does not pose a risk to the health or safety of children;

(3) An official [A] copy of the final record of judicial finding or conviction (signed by a judge and file stamped);

(4) If the person [individual] was incarcerated:
   (A) (No change.)
   (B) The date the person [individual] was released from incarceration; and
   (C) (No change.)

(5) If the person was given a probated sentence (including deferred adjudication), the dates of the probation and [a] information related to the terms and conditions of the probation, including documentation regarding whether or not [that] the person successfully completed the terms of probation and paid all court costs, [and] supervision fees, and court-ordered restitution and fines. If the person is presently on probation, a statement from the person's probation officer regarding the status of the person's probation;

(6) Age of the person at the time the crime was committed;
   [If the individual received deferred adjudication, include the date that
   the probation was or will be completed;]

(7) A detailed, signed statement from the person regarding the [The] nature and seriousness of the crime for which the person [he] was convicted, including:
   (A) Why the person was arrested;
   (B) Where the person was when arrested;
   (C) Who else was involved in the criminal incident;
   (D) Whether anyone was injured;
   (E) The extent and nature of other arrests within the person's past criminal history;
   (F) What has changed for this person since the time of the arrest; and
   (G) Why the person does not feel that he or she poses a risk to children in care;

(8) Evidence of rehabilitative effort;

(9) The work history of the person over the past 10 years, including names of employers, dates of employment, and positions held;

(10) At least three reference letters from individuals who are not related to the person (professionals, employers, law enforcement, etc.) and who have knowledge about the person's character and, if applicable, the person's ability to work with children;

(11) Information related to the person's role (or prospective role) with your operation, including:
   (A) Job title (for employees);
   (B) Hours and days of service;
   (C) Job responsibilities;
   (D) Nature and amount of interaction with children in care;
   (E) Plans for supervision of the person; and
   (F) Anticipated amount of unsupervised time with children in care;

(12) The ages and any special needs of children in care for whom the person will be responsible and/or with whom the person may interact;

(13) If the risk evaluation is for a relative foster or adoptive placement or a foster or adoptive placement where the person has a significant longstanding relationship with the child, then:
   (A) The names and dates of birth of any foster or adoptive children who have been or are expected to be placed in the home (if known);
   (B) A description of the foster or adoptive parent's relationship to each child; and
   (C) A copy of a home assessment or home screening, if one has been completed; and

(14) Any additional items requested by the CBCU Manager to assist with the determination of risk.

(15) The extent and nature of the person's past criminal history;

(16) Age of the person when the crime was committed;

(17) The time that has elapsed since the person's last criminal activity;

(18) Evidence of rehabilitative efforts;

(19) The conduct and work activities of the person;

(20) Other evidence of the person's present fitness, including letters of recommendation from the prosecuting attorney, law enforcement, and correctional officers who were involved in the case;

(21) Documentation showing that the person has maintained a record of steady employment, has supported his children, has maintained a record of good conduct, and has paid any outstanding court costs, fees, fines, and restitution related to the conviction or deferred adjudication;

(22) If the person is an employee or volunteer or potential employee or volunteer, information about his anticipated job responsibilities, plans for supervision, and hours and days of service; and

(23) If any person is eligible for a risk evaluation according to §745.693(b)(2) of this title (relating to In what circumstances can someone with a criminal history be present in a child-care operation?), information about the foster or adoptive parent's relationship to the foster or adoptive child.)

§745.688. May Licensing place conditions or restrictions on a person's presence at an operation pending the outcome of a risk evaluation?

If a person can be present at an operation pending the outcome of a risk evaluation, we may place conditions or restrictions on the person's presence at the operation as we find necessary to protect the health or safety of children. For example, we may restrict an employee from having a certain role at the operation pending the outcome of the risk evaluation.

§745.689. What must I include in my request for a risk evaluation based on a Central Registry [central registry] finding?

You must include the following:
(1) A completed Form 2974, Request for Risk Evaluation Based on Past Criminal History or Central Registry Findings [(text omitted)];

(2) A valid rationale from the operation's director, owner, operator, or administrator explaining why [that] the person who has a Central Registry [central registry] finding does not pose a risk to the health or safety of children;

(3) Age of the person at the time of the abuse or neglect;

(4) The amount of time that has elapsed since the person's last abuse or neglect finding;

(5) A detailed, signed statement from the person regarding the nature and seriousness of the abuse and/or neglect finding, including:

(A) The circumstances involved in the abuse and/or neglect incident and investigation;

(B) The extent and nature of the person's past abuse and/or neglect history;

(C) What has changed for this person since the time of the abuse or neglect finding and

(D) Why the person does not feel that he or she poses a risk to children in care;

(6) Evidence that factors which impact the risk of future abuse or neglect have changed;

(7) At least three reference letters from individuals who are not related to the person (professionals, employers, caseworkers, etc.) and who have knowledge about the person's character and, if applicable, the person's ability to work with children;

(8) The work history of the person over the past 10 years, including names of employers, dates of employment, and positions held;

(9) Information related to the person's role (or prospective role) with your operation, including:

(A) Job title (for employees);

(B) Hours and days of service;

(C) Job responsibilities;

(D) Nature and amount of interaction with children in care;

(E) Plans for supervision of the person; and

(F) Anticipated amount of unsupervised time with children in care;

(10) The ages and any special needs of children in care for whom the person will be responsible and/or with whom the person may interact;

(11) If the risk evaluation is for a relative foster or adoptive placement or a foster or adoptive placement where the person has a significant longstanding relationship with the child, then:

(A) The names and dates of birth of any foster or adoptive children who have been or are expected to be placed in the home (if known);

(B) A description of the foster or adoptive parent's relationship to each child; and

(C) A copy of a home assessment or home screening, if one has been completed; and

(12) Any additional items requested by the CBCU Manager to assist with the determination of risk;

(13) The final child abuse or neglect investigation report (Note: If the requester does not have a copy of the record, then the local Licensing staff should include this information in the request.);

(14) Nature and seriousness of the abuse or neglect finding(s);]

(15) The extent and nature of the person's past abuse or neglect history;

(16) Age of the person at the time of the abuse or neglect;

(17) The time that has elapsed since the person's last abuse or neglect finding;

(18) Evidence that factors which impact the risk of future abuse or neglect have changed;

(19) Other evidence of the person's present fitness, including letters of recommendation from employers, caseworker, or others who have or have had contact with the person;

(20) The conduct and work activity of the person;

(21) Documentation showing that the person has maintained a record of steady employment, has supported his dependents, and has maintained a record of good conduct; and

(22) If the person is an employee or volunteer or potential employee or volunteer, information related to job responsibilities that would be performed, plans for supervision, and hours and days of service.

§745.695. What criminal history and Central Registry findings are relevant to a person's ability to be a licensed administrator?

(a) A licensed administrator must comply with the criminal history requirements in §745.651(a)(1) of this title (relating to What types of criminal convictions may affect a person's ability to be present at an operation?).

(b) In addition to complying with the relevant criminal history requirements in subsection (a) of this section, a licensed administrator is monitored for offenses related to financial crimes, including all Title 7 Offenses Against Property and Title 11 Organized Crime offenses in the Penal Code.

(c) A licensed administrator must comply with the Central Registry requirements outlined in §745.657 of this title (relating to What types of Central Registry findings may affect a person's ability to be present at an operation?).

§745.696. Does having a criminal history or Central Registry finding prohibit me from becoming a licensed administrator?

(a) Criminal history and Central Registry findings may affect your ability to have an administrator's license or a licensed administrator's ability to be present at a particular operation.

(b) You are prohibited from being a licensed administrator if you have:

(1) A criminal conviction or Central Registry finding that would bar you from being present at an operation while children are in care; or

(2) A felony conviction of a financial crime within the past 10 years.

(c) You are not prohibited from being a licensed administrator if you have a felony conviction of a financial crime older than 10
years or a misdemeanor conviction of a financial crime. However, these crimes do require a risk evaluation and Licensing may place restrictions on your license. In addition, you may not be present at the operation while children are in care until the operation requests a risk evaluation for you, and the risk evaluation is approved.

(d) You are not prohibited from being a licensed administrator if you have a criminal conviction or Central Registry finding that only requires a risk evaluation. However, Licensing may place restrictions on your license. In addition, you may not be present at the operation while children are in care until the operation requests a risk evaluation for you, and the risk evaluation is approved.

§745.699. What should I do if a person in my child-care operation is currently the subject of a criminal investigation?

You must report the investigation to us if the person is arrested or charged with a crime [once there is a criminal indictment for a felony or a criminal information for a misdemeanor]

§745.701. May a person arrested or charged with a crime be present at [in] an operation while children are in care?

(a) We determine on a case-by-case basis whether someone arrested or charged with a crime may be present in an operation while children are in care. The person arrested or charged with a crime may not be present at an operation while children are in care if:

1. A [a] conviction for the arrest or charged offense would permanently or on a time-limited basis bar the person from being present at the operation, or would prohibit the person [him] from being present at the operation pending the outcome of a risk evaluation; or
   [or, or if we]

2. We determine that the person [he] poses an immediate threat to the health or safety of children.

(b) If the person is arrested or charged with a crime for which the person would be eligible to be present at the operation pending a risk evaluation if convicted, we may place conditions or restrictions on the person's presence at the operation while children are in care pending the resolution of the criminal matter as we find necessary to protect the health or safety of children.

§745.703. If I have knowledge that a person has a criminal conviction or Central Registry (central registry) finding, can the person [he] be present at [in] my operation while children are in care?

This person may be present in your operation while children are in care if you have requested a background check under this subchapter (relating to Background Checks) [§745.613 of this title (relating to What is the purpose of background checks?)], and:

1. The results do not indicate [that he has] a criminal conviction or a Central Registry (central registry) finding that precludes the person [may preclude him] from being present at [in] an operation while children are in care under §745.651 and §745.657 (§745.655) of this title (relating to What types of criminal convictions may affect a person's ability to be [preclude a person from being] present at [in] an operation? and What types of Central Registry findings may affect a person's ability to be at an operation? [What types of central registry findings may preclude a person from being present in an operation?]); or

2. We have approved a risk evaluation on the person that meets §745.697 of this title (relating to Is an approved risk evaluation permanent?) [him].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.
infants, in its Minimum Standards for Child-Care Centers. The purpose of the amendments is to implement new federal regulations passed by the United States Consumer Product Safety Commission (CPSC) related to safety standards for cribs. Child Care Licensing is also proposing changes concerning safe sleep practices and requiring written operational policies related to health checks.

New provisions in this chapter will require child-care centers to obtain and maintain certificates of compliance that cribs in use by such providers meet the applicable federal rules at Title 16, Code of Federal Regulations (CFR), Parts 1219 and 1220. The certificates of compliance will verify that the following new requirements established by the CPSC have been met: (1) Traditional drop-side cribs cannot be made or sold; immobilizers and repair kits are not allowed; (2) Wood slats must be made of stronger woods to prevent breakage; (3) Crib hardware must have anti-loosening devices to keep it from coming loose or falling off; (4) Mattress supports must be more durable; and (5) Safety testing must be more rigorous. These mandatory federal requirements apply to all sales of cribs in the United States on or after June 28, 2011, and are mandatory for all cribs utilized by child-care centers, child-care homes, and other places of public accommodation by December 28, 2012. Changes for safe sleep practices are based on recommendations from Caring for Our Children 3rd Edition and American Academy of Pediatrics.

DFPS is also proposing that child care centers add procedures to their operational policies if they conduct health checks on children in care. Health checks are conducted to identify potential concerns about a child's health, such as signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance. A summary of the changes is described below:

The amendment to §746.105 adds the term "health check."

The amendment to §746.601 adds conducting health checks to a center's operational policies to ensure parents are informed if health checks are performed on their children.

The amendment to §746.801 adds the requirement that a certificate of compliance for cribs be maintained at the center.

The amendment to §746.2409: (1) replaces the word "rails" with "gates" and replaces the word "side" with "drop gate," which provides consistency with the federal rule prohibiting use of traditional drop rails; and (2) adds a new requirement for a certificate of compliance that verifies cribs meet federal rule Title 16, CFR, Parts 1219 or 1220. If the crib is a medical device ("hospital crib") used by a child with special care needs, then a written order from the child's health-care professional is required. A copy of the certificate of compliance or written order from the child's health-care professional must be kept on file and available for review upon request by Licensing during hours of operation.

The amendment to §746.2415 outlines safe sleep practices for children younger than 12 months of age.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections relating to crib safety will be that minimum standards reflect and support the mandatory changes in federal law at Title 16, CFR, Parts 1219 and 1220, relating to "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively. In addition, rule changes modify certain terminology for consistency with the mandatory federal crib safety rules and ensure that appropriate documentation regarding crib safety is maintained by child-care providers. The public benefit relating to changes prohibiting the use of loose bedding and other sleeping hazards in the sleeping surfaces for children under 12 months of age will be to keep children in care safer because they are consistent with safe sleeping practices endorsed by the American Academy of Pediatrics. The public will benefit from rule changes related to health checks because consumers of child-care services will be informed about a child-care operational policies and procedures relating to health checks.

Because child-care providers are already obligated under federal law to comply with federal crib rules adopted by the CPSC by December 28, 2012, there is no anticipated economic cost to persons who are required to comply with the proposed sections for the first five years after the rule is in effect. Child Care Licensing first notified child care providers of the changes to federal crib regulation by email in June 2011. The notification noted that providers had until December 28, 2012, to comply and that minimum standards would be revised to reflect the changes in the federal requirements. Information regarding the changes to the federal requirements is also available to child care providers and the general public on the Child Care Licensing website. Child-care providers or other members of the public who are interested in reviewing the impact to persons, including small businesses, that must comply with the federal crib safety rules at Title 16, CFR, Parts 1219 and 1220, should refer to the fiscal impact analysis that accompanied the proposal of the federal rules at Federal Register, Volume 75, No. 141, July 23, 2010, beginning at Page 43308.

There is no anticipated impact on small and micro-businesses as a result of the proposed rule change because the changes to CCL rules do not impose any requirements that will require additional staff, the purchase of additional equipment, or any other changes to the cost of operations.

HHSC has determined that the proposed amendments do not restrict or limit an owner’s right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Penni Massingill at (512) 438-2366 in DFPS’s Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-463, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §746.105

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC
§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§746.105. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. In addition, the following words and terms have the following meanings unless the context clearly indicates otherwise:

   (1) - (31) (No change.)
   
   (32) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.
   
   (33) Health-care professional--A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nurse Examiners, a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.
   
   (34) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.
   
   (35) Infant--A child from birth through 17 months.
   
   (36) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use, as specified by the manufacturer, that may include but not be limited to bounce, climb, slide, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.
   
   (37) Janitorial duties--Those services that involve cleaning and maintenance above that which is required for the continuation of the child-care program. Cleaning and maintenance include such duties as cleansing carpets, washing cots, sweeping, vacuuming, or mopping a classroom.
   
   (38) Natural environment--Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a toddler with a disability would be a play group or child-care center or whatever setting exists for toddlers without disabilities.
   
   (39) Pre-service training--Training given to a person who has no previous experience in professional child care and no relevant training in specified topics.
   
   (40) Propped bottle--A bottle supported by something other than the child or adult's hand because the child is too young to hold it.
   
   (41) Regularly--On a recurring, scheduled basis.
   
   (42) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.
   
   (43) School-age child--A child who is five years of age and older, and who will attend school at or away from the child-care center in August or September of that year.
   
   (44) Single-use area--Area not routinely used for children's activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building.
   
   (45) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including but not limited to, movement of large and/or small muscles, learning, talking, communicating, self-help, social, emotional, seeing, hearing, and breathing.
   
   (46) State or local fire marshal--A fire official designated by the city, county, or state government.
   
   (47) State or local sanitation official--A sanitation official designated by the city, county, or state government.
   
   (48) Toddler--A child from 18 months through 35 months.
   
   (49) Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.
   
   (50) Water activities--Related to the use of splashing pools, wading pools, swimming pools, or other similar bodies of water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

TRD-201204063
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

40 TAC §746.501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§746.501. What written operational policies must I have?
You must develop written policies that at a minimum address each of the following:

(1) - (23) (No change.)

(24) Your provisions to provide a comfortable place with a seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care; and

(25) Preventing and responding to abuse and neglect of children, including:

(A) - (D) (No change.)

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention; and

(26) Procedures for conducting health checks, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER C. RECORD KEEPING
DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

40 TAC §746.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§746.801. What records must I keep at my child-care center?

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (18), (19), and (20) are optional, but if provided, allows Licensing to avoid duplicating the evaluation of standards that have been evaluated by other state agencies within the past year:

(1) - (22) (No change.)

(23) Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the child-care center; and

(24) System to track when a child's care begins and ends daily; and

(25) Certificate of compliance for cribs, if applicable.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §746.2409, §746.2415

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§746.2409. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) - (6) (No change.)

(7) No cutout areas in the headboard or footboard that would entrap a child’s head or body; and

(8) Drop gates [rails], if present, which fasten securely and cannot be opened by a child; and

(9) A certificate of compliance that each crib meets the applicable federal rules at Title 16, Code of Federal Regulations, Parts 1219 or 1220, concerning "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively, or written order from the child's health-care professional when a medical device is required for a child with special care needs. A copy of the certificate of compliance or written order from the child's health-care professional must be kept on file and available for review upon request by Licensing during hours of operation.

(18) (No change.)

(c) You must never leave children in the crib with the drop gate [side] down.
§746.2415. Are specific types of equipment prohibited for use with infants?

Yes. The following list of equipment, identified as unsafe for infants by the Consumer Product Safety Commission and the American Academy of Pediatrics, must not be used in the child-care center:

(1) - (5) (No change.)

(6) Soft or loose bedding such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads, and comforters must not be used in cribs for children [six months old and] younger than 12 months of age.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

TRD-201204066
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 2. REQUIRED NOTIFICATION

40 TAC §746.305

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §746.305, concerning what other situations require notification to Licensing, in its Minimum Standards for Child-Care Centers chapter. The purpose of the amendment is to make the rule consistent with changes concerning background checks proposed in Chapter 745, Licensing. Those rules are also published in this issue of the Texas Register.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection for children resulting from improved decision-making by operations concerning their employees. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Ryan Malsbary at (512) 438-5836 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-462, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.056.

§746.305. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) - (3) (No change.)

(4) A person for which you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime: [A county or district attorney accepts an indictment or information regarding an official complaint against an employee alleging commission of any crime noted in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).]

(5) - (6) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.105, 747.501, 747.801, 747.2309, and 747.2315, concerning what do certain words and terms mean when used in this chapter, what written operational policies must I have, what records must I keep at my child-care home, what specific safety requirements must my cribs meet, and are specific types of equipment prohibited for use with infants, in its Minimum Standards for Child-Care Homes chapter. The purpose of the amendments is to implement new federal regulations passed by the United States Consumer Product Safety Commission (CPSC) related to safety standards for cribs.
Child Care Licensing is also proposing changes concerning
safe sleep practices and requiring written operational policies
related to health checks.

New provisions in this chapter will require child-care homes to
obtain and maintain certificates of compliance that cribs in use by
such providers meet the applicable federal rules at Title 16, Code
of Federal Regulations (CFR), Parts 1219 and 1220. The cer-
tificates of compliance will verify that the following new require-
ments established by the CPSC have been met: (1) Traditional
drop-side cribs cannot be made or sold; immobilizers and repair
kits are not allowed; (2) Wood slats must be made of stronger
woods to prevent breakage; (3) Crib hardware must have anti-
loosening devices to keep it from coming loose or falling off; (4)
Mattress supports must be more durable; and (5) Safety testing
must be more rigorous. These mandatory federal requirements
apply to all sales of cribs in the United States on or after June
28, 2011, and are mandatory for all cribs utilized by child-care
centers, child-care homes, and other places of public accommoda-
tion by December 28, 2012. Changes for safe sleep practices
are based on recommendations from Caring For Our Children 3rd

DFPS is also proposing that child care homes add procedures
to their operational policies if they conduct health checks on chil-
dren in care. Health checks are conducted to identify potential
concerns about a child’s health, such as signs or symptoms of
illness and injury, in response to changes in the child’s behavior
since the last date of attendance. A summary of the changes is
described below:

The amendment to §747.105 adds the term "health check."
The amendment to §747.501 adds conducting health checks to
a home’s operational policies to ensure parents are informed if
health checks are performed on their children.
The amendment to §747.801 corrects several rule titles and adds
the requirement that certificate of compliance for cribs be main-
tained at the child care home.
The amendment to §747.2309: (1) adds a new requirement for
a certificate of compliance that verifies cribs meet federal rule
Title 16, CFR, Parts 1219 or 1220. If the crib is a medical device
("hospital crib") used by a child with special care needs, then a
written order from a health-care professional is required. A copy
of the certificate of compliance or written order from the child’s
health-care professional must be kept on file and available for
review upon request from Licensing; and (2) replaces the word
"rails" with "gates" and replaces the word "side" with "drop gate,"
which provides consistency with the federal rule prohibiting use
of traditional drop rails.
The amendment to §747.2315 adds additional examples of loose
bedding, such as blankets and sleep positioning devices and in-
creases the age of children that the standards applies to from six
months to 12 months. This change is consistent with safe sleep
practices endorsed by the American Academy of Pediatrics.

Cindy Brown, Chief Financial Officer of DFPS, has determined
that for the first five-year period the proposed sections will be in
effect there will be no fiscal implications for state or local govern-
ment as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five
years the sections are in effect the public benefit anticipated as a
result of enforcing the sections relating to crib safety will be that
minimum standards reflect and support the mandatory changes
in federal law at Title 16, CFR, Parts 1219 and 1220, relating to
"Safety Standards for Full-Size Baby Cribs" and "Safety Stan-
dards for Non-Full-Size Baby Cribs," respectively. In addition,
rules changes modify certain terminology for consistency with the
mandatory federal crib safety rules and ensure that appropriate
documentation regarding crib safety is maintained by child-care
providers. The public benefit relating to changes prohibiting the
use of loose bedding and other sleeping hazards in the sleeping
surfaces for children under 12 months of age will be to keep chil-
dren in care safer because they are consistent with safe sleeping
practices endorsed by the American Academy of Pediatrics. The
public will benefit from rule changes related to health checks be-
cause consumers of child-care services will be informed about a
child-care operation’s policies and procedures relating to health
checks.

Because child-care providers are already obligated under fed-
eral law to comply with federal crib rules adopted by the CPSC
by December 28, 2012, there is no anticipated economic cost to
persons who are required to comply with the proposed sections
for the first five years after the rule is in effect. Child Care Licens-
ing first notified child care providers of the changes to federal
crib regulation by email in June 2011. The notification noted that
providers had until December 28, 2012, to comply and that min-
umum standards would be revised to reflect the changes in the
federal requirements. Information regarding the changes to the
federal requirements is also available to child care providers and
the general public on the Child Care Licensing website. Child-
care providers or other members of the public who are interested
in reviewing the impact to persons, including small businesses,
that must comply with the federal crib safety rules at Title 16,
CFR, Parts 1219 and 1220, should refer to the fiscal impact analy-
sis that accompanied the proposal of the federal rules at Fed-
eral Register, Volume 75, No. 141, July 23, 2010, beginning at
Page 43308.

There is no anticipated impact on small and micro-businesses
as a result of the proposed rule change because the changes to
CCL rules do not impose any requirements that will require ad-
ditional staff, the purchase of additional equipment, or any other
changes to the cost of operations.

HHSC has determined that the proposed amendments do not
restrict or limit an owner’s right to his or her property that would
otherwise exist in the absence of government action and, there-
fore, do not constitute a taking under §2007.043, Government
Code.

Questions about the content of the proposal may be directed to
Penny Massingill at (512) 438-2366 in DFPS’s Child Care
Licensing Division. Electronic comments may be submitted to
Marianne.McDonald@dfps.state.tx.us. Written comments on
the proposal may be submitted to Texas Register Liaison, Legal
Services-463, Department of Family and Protective Services
E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30
days of publication in the Texas Register.

SUBCHAPTER A. PURPOSE AND
DEFINITIONS
40 TAC §747.105
The amendment is proposed under Human Resources Code
(HRC) §40.0505 and Government Code §531.0055, which
provide that the Health and Human Services Executive Com-
misioner shall adopt rules for the operation and provision of
services by the health and human services agencies, including
the Department of Family and Protective Services; and HRC
§40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§747.105. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or unless the context clearly indicates otherwise. In addition, the following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) - (32) (No change.)

(33) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(34) [433] Health-care professional--A licensed physician, licensed registered nurse with appropriate advanced practice authorization from the Texas Board of Nursing, a licensed vocational nurse (LVN), licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of his license. This does not include medical doctors or medical personnel not licensed to practice in the United States.

(35) [434] Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(36) [435] Infant--A child from birth through 17 months.

(37) [436] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use, as specified by the manufacturer, that may include but not be limited to bounce, climb, slide, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(38) [437] Janitorial duties--Those services that involve cleaning and maintenance above that which is required for the continuation of the child-care program. Cleaning and maintenance include such duties as cleansing carpets, washing cots, sweeping, vacuuming, or mopping an area while children are in care.

(39) [438] Natural environment--Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a toddler with a disability would be a play group or child-care home or whatever setting exists for toddlers without disabilities.

(40) [439] Pre-service training--Training given to a person who has no previous experience in professional child care and no relevant training in specified topics.

(41) [440] Propped bottle--A bottle supported by something other than the child or adult's hand because the child is too young to hold it.

(42) [441] Regularly--On a recurring, scheduled basis.

(43) [442] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(44) [443] School-age child--A child who is five years of age and older, and who will attend school at or away from the child-care home in August or September of that year.

(45) [444] Single-use area--Area not routinely used for children's activities, such as a bathroom, hallway, storage room, cooking area of a kitchen, swimming pool, and storage building.

(46) [445] Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including but not limited to, movement of large and/or small muscles, learning, talking, communicating, self-help, social, emotional, seeing, hearing, and breathing.

(47) [446] State or local fire marshal--A fire official designated by the city, county, or state government.

(48) [447] State or local sanitation official--A sanitation official designated by the city, county, or state government.

(49) [448] Toddler--A child from 18 months through 35 months.

(50) [449] Universal precautions--An approach to infection control where all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens.

(51) [450] Water activities--Related to the use of splashing pools, wading pools, swimming pools, or other similar bodies of water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 4. OPERATIONAL POLICIES

40 TAC §747.501

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042.

§747.501. What written operational policies must I have?
You must develop written policies that at a minimum address each of
the following:

(1) - (8) (No change.)

(9) Instructions on how a parent may contact the local Li-
censing office, DFPS child abuse hotline, and DFPS website; [and]

(10) Your emergency preparedness plan; and[

(11) Procedures for conducting health checks, if applica-
able.

This agency hereby certifies that the proposal has been reviewed
by legal counsel and found to be within the agency's legal autho-
ritv to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
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Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

SUBCHAPTER C. RECORD KEEPING
DIVISION 3. RECORDS THAT MUST BE KEPT
ON FILE AT THE CHILD-CARE HOME

40 TAC §747.801

The amendment is proposed under Human Resources Code
(HRC) §40.0505 and Government Code §531.0055, which
provide that the Health and Human Services Executive Com-
missioner shall adopt rules for the operation and provision of
services by the health and human services agencies, including
the Department of Family and Protective Services; and HRC
§40.021, which provides that the Family and Protective Ser-
vices Council shall study and make recommendations to the
Executive Commissioner and the Commissioner regarding rules
governing the delivery of services to persons who are served or
regulated by the department.

The amendment implements HRC §42.042 and Title 16, Code
of Federal Regulations, Parts 1219 and 1220.

§747.801. What records must I keep at my child-care home?

You must maintain and make the following records available for our
review upon request during hours of operation. Paragraphs (10), (11),
and (12) are optional, but if provided, will allow Licensing to avoid
duplicating the evaluation of standards that have been evaluated by
another state agency within the past year:

(1) - (5) (No change.)

(6) Medication records, as required in §747.3605 of this
title (relating to How must I administer medication to a child in my
care? [What records must I keep when I administer medication to a
child in my care?]);

(7) (No change.)

(8) Fire safety documentation for emergency drills, fire ex-
tinguishers, smoke detectors and emergency evacuation and relocation
diagram, as required in §747.5005 of this title (relating to Must I prac-
tice my emergency preparedness plans? [How often must I practice
my emergency evacuation and relocation plans?]); §747.5007 of this
title (relating to Must I have an emergency evacuation and relation di-
agram?); §747.5107 of this title (relating to How often must I inspect
and service the fire extinguisher?); §747.5115 of this title (relating to
How often must the smoke detectors at my child-care home be tested?);
and §747.5117 of this title (relating to How often must I have an el-
tronic smoke alarm system tested?);

(9) - (12) (No change.)

(13) Written approval from the fire marshal to provide care
above or below ground level, if applicable; [and]

(14) Most recent DFPS form certifying that you have
reviewed each of the bulletins and notices issued by the United States
Consumer Product Safety Commission regarding unsafe children's
products and that there are no unsafe children's products in use or
accessible to children in the home; and[

(15) Certificate for compliance for cribs, if applicable.

This agency hereby certifies that the proposal has been reviewed
by legal counsel and found to be within the agency's legal autho-
ritv to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
TRD-201204069
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012
For further information, please call: (512) 438-3437

SUBCHAPTER H. BASIC CARE
REQUIREMENTS FOR INFANTS

40 TAC §747.2309, §747.2315

The amendments are proposed under Human Resources Code
(HRC) §40.0505 and Government Code §531.0055, which
provide that the Health and Human Services Executive Com-
missioner shall adopt rules for the operation and provision of
services by the health and human services agencies, including
the Department of Family and Protective Services; and HRC
§40.021, which provides that the Family and Protective Ser-
vices Council shall study and make recommendations to the
Executive Commissioner and the Commissioner regarding rules
governing the delivery of services to persons who are served or
regulated by the department.

The amendments implement HRC §42.042 and Title 16, Code
of Federal Regulations, Parts 1219 and 1220.

§747.2309. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) - (6) (No change.)

(7) No cutout areas in the headboard or footboard that
would entrap a child's head or body; [and]

(8) Drop gates [rails], if present, which fasten securely and
cannot be opened by a child; and[

(9) A certificate of compliance that each crib meets the ap-
licable federal rules at Title 16, Code of Federal Regulations, Parts
1219 or 1220, concerning "Safety Standards for Full-Size Baby Cribs" 
and "Safety Standards for Non-Full-Size Baby Cribs," respectively, or
written order from the child's health-care professional when a medical

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device is required for a child with special care needs. A copy of the certificate of compliance or written order from the child's health-care professional must be kept on file and available for review upon request by Licensing during hours of operation.

(b) (No change.)

(c) You must never leave a child in a crib with the drop gate [side] down.

§747.2315. Are specific types of equipment prohibited for use with infants?
Yes. The following list of equipment, identified as unsafe for infants by the Consumer Product Safety Commission and the American Academy of Pediatrics, must not be used in your child-care home:

(1) - (4) (No change.)

(5) Soft or loose bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads, and comforters, must not be used in cribs for children [six months old and] younger than 12 months of age.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 2. REQUIRED NOTIFICATIONS
40 TAC §747.303

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.303, concerning what other situations require notification to Licensing, in its Minimum Standards for Child-Care Homes chapter. The purpose of the amendment is to make the rule consistent with changes concerning background checks proposed in Chapter 745, Licensing. Those rules are also published in this issue of the Texas Register.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection for children resulting from improved decision-making by operations concerning their employees. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Ryan Malsbary at (512) 438-5836 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-462. Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services to children served by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.056.

§747.303. What other situations require notification to Licensing?

(a) You must notify us as soon as possible, but no later than two days after:

(1) - (3) (No change.)

(4) A person for which you are required to request a background check under Chapter 745, Subchapter F of this title (relating to Background Checks) is arrested or charged with a crime; [A county or district attorney accepts an indictment or information regarding an official complaint against a household member or caregiver alleging commission of any crime noted in §745.651 of this title (relating to What types of criminal convictions may preclude a person from being present in an operation?).]

(5) - (6) (No change.)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.
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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

CHAPTER 748. GENERAL RESIDENTIAL OPERATIONS
SUBCHAPTER J. CHILD CARE
DIVISION 8. ADDITIONAL REQUIREMENTS FOR INFANT CARE

40 TAC §748.1751, §748.1757

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §748.1751 and §748.1757, concerning what specific safety requirements must my cribs meet and what types of equipment are not allowed for use with infants, in its General Residential Operations chapter. The purpose of the amendments is to implement new federal regulations passed by the United States Consumer Product Safety Commission (CPSC) related to safety standards for cribs. Child Care Licensing is also proposing changes concerning safe sleep practices.

New provisions in this chapter will require general residential operations to obtain and maintain certificates of compliance that cribs in use by such providers meet the applicable federal rules at Title 16, Code of Federal Regulations (CFR), Parts 1219 and 1220. The certificates of compliance will verify that the following new requirements established by the CPSC have been met: (1) Traditional drop-side cribs cannot be made or sold; immobi- lizers and repair kits are not allowed; (2) Wood slats must be made of stronger woods to prevent breakage; (3) Crib hardware must have anti-loosening devices to keep it from coming loose or falling off; (4) Mattress supports must be more durable; and (5) Safety testing must be more rigorous. These mandatory federal requirements apply to sales of cribs in the United States on or after June 28, 2011, and are mandatory for all cribs utilized by child-care centers, child-care homes and other places of public accommodation by December 28, 2012. Changes for safe sleep practices are based on recommendations from Caring for Our Children 3rd Edition and American Academy of Pediatrics.

The amendment to §748.1751: (1) adds a new requirement for a certificate of compliance that verifies cribs meet federal rule Title 16, CFR, Parts 1219 or 1220. If the crib is a medical device ("hospital crib") used by a child with special care needs, then a written order from the health-care professional is required. A copy of the certificate of compliance or written order from the child's health-care professional must be kept on file and available for review upon request from Licensing; and (2) replaces the word "rails" with "gates" and replaces the word "side" with "drop gate," which provides consistency with federal rule prohibiting use of traditional drop rails.

The amendment to §748.1757 adds additional examples of loose bedding, such as blankets and sleep positioning devices and increases the age of children that the standards applies to from six months to 12 months. This change is consistent with safe sleep practices endorsed by the American Academy of Pediatrics.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections relating to crib safety will be that minimum standards reflect and support the mandatory changes in federal law at Title 16, CFR, Parts 1219 and 1220, relating to "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively. In addition, rule changes modify certain terminology for consistency with the mandatory federal crib safety rules and ensure that appropriate documentation regarding crib safety is maintained by child-care providers. The public benefit relating to changes prohibiting the use of loose bedding and other sleeping hazards in the sleeping surfaces for children under 12 months of age will be to keep children in care safer because they are consistent with safe sleeping practices endorsed by the American Academy of Pediatrics.

Because child-care providers are already obligated under federal law to comply with federal crib rules adopted by the CPSC by December 28, 2012, there is no anticipated economic cost to persons who are required to comply with the proposed sections for the first five years after the rule is in effect. Child Care Licensing first notified child care providers of the changes to federal crib regulation by email in June 2011. The notification noted that providers had until December 28, 2012, to comply and that minimum standards would be revised to reflect the changes in the federal requirements. Information regarding the changes to the federal requirements is also available to child care providers and the general public on the Child Care Licensing website. Childcare providers or other members of the public who are interested in reviewing the impact to persons, including small businesses, that must comply with the federal crib safety rules at Title 16, CFR, Parts 1219 and 1220, should refer to the fiscal impact analysis that accompanied the proposal of the federal rules at Federal Register, Volume 75, No. 141, July 23, 2010, beginning at page 43308.

There is no anticipated impact on small and micro-businesses as a result of the proposed rule change because the changes to CCL rules do not impose any requirements that will require additional staff, the purchase of additional equipment, or any other changes to the cost of operations.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Penni Massingill at (512) 438-2366 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-463, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the Texas Register.

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and Title 16, Code of Federal Regulations, Parts 1219 and 1220.

§748.1751. What specific safety requirements must my cribs meet?

(a) All cribs must have:

(1) - (6) (No change.)

PROPOSED RULES August 17, 2012 37 TexReg 6285
(7) No cutout areas in the headboard or footboard that would entrap a child's head or body; [and]

(8) Drop gates [rails], if present, which fasten securely and cannot be opened by a child; [and][.]

(9) A certificate of compliance that each crib meets the applicable federal rules at Title 16, Code of Federal Regulations, Parts 1219 or 1220, concerning "Safety Standards for Full-Size Baby Cribs" and "Safety Standards for Non-Full-Size Baby Cribs," respectively, or written order from the child's health-care professional when a medical device is required for a child with special care needs. A copy of the certificate of compliance or written order from the child's health-care professional must be kept on file and available for review upon request by Licensing during hours of operation.

(b) (No change.)

(c) You must never leave a child in the crib with the drop gate [rails] down.

(d) (No change.)

§748.1757. What types of equipment are not allowed for use with infants?

(a) - (b) (No change.)

(c) You may not use soft or loose bedding, such as blankets, sleep positioning devices, stuffed toys, quilts, pillows, bumper pads, and comforters in a crib for an infant [six months old or] younger than 12 months of age.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 1, 2012.

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 16, 2012

For further information, please call: (512) 438-3437
ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the Texas Register does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 93. TRADEMARKS

The Office of the Secretary of State adopts the repeal of §§93.1 - 93.6, 93.41 - 93.45, 93.51 - 93.55, 93.61 - 93.69, 93.81, 93.82, 93.91 - 93.94, 93.101 - 93.103, 93.111 - 93.118, 93.131 - 93.134, 93.141, 93.151 - 93.154, 93.161 - 93.164, 93.171, 93.172, and 93.181 - 93.184 and new §§93.31 - 93.61, 93.11 - 93.15, 93.21 - 93.24, 93.31 - 93.40, 93.51, 93.52, 93.61 - 93.63, 93.71, 93.72, 93.81 - 93.89, 93.91 - 93.94, 93.101, 93.102, 93.111 - 93.115, 93.121 - 93.124, 93.131, 93.132, 93.141 - 93.144, and 93.151, concerning trademarks. The repeals and new sections are adopted without changes to the proposal published in the June 29, 2012, issue of the Texas Register (37 TexReg 4729) and will not be republished.

The repeal and replacement of Chapter 93 are necessary to reorganize the chapter, update outdated language, and conform to the statutory revisions to Chapter 16 of the Business & Commerce Code, enacted by the 82nd Legislature, Regular Session, in House Bill 3141, effective September 1, 2012 (hereinafter referred to as "HB 3141"). In addition to those general revisions, the following specific changes are adopted:

New §93.31 sets forth the application requirements. In accordance with HB 3141, additional applicant information is required, the application must be signed and verified by the applicant and must be accompanied by three specimens of use.

Section 93.32 sets forth the additional application requirements for applicants seeking to register a mark in two or more classes.

Section 93.33 sets forth the execution requirements, including providing the form for verification and guidance as to who has authority to sign the application.

Section 93.34 specifies that the goods and services described in the application must be narrow enough to fall within one class and that if the applicant seeks to register a mark in two or more classes, the application must include a separate description of goods and services for each class.

Section 93.36 clarifies the requirements for claiming color as an element of the mark.

Section 93.37 sets forth the requirement that the applicant disclose any prior applications for registration of the mark with the United States Patent and Trademark Office and notes that failure to disclose prior application may result in rejection of the application by the Secretary of State.

Section 93.51 and §93.52 set forth the requirements of the drawing sheet, including specifications of the actual drawing of the mark.

Section 93.61 and §93.62 set forth the requirements of the specimens, including the requirement that the application include at least three specimens of use, including at least one specimen per class in which registration is sought.

Section 93.72 sets forth the procedures for applications containing more classes than what is covered by the fees submitted.

Section 93.82 sets forth the manner in which the Secretary of State will process concurrent applications for same or similar marks.

Section 93.83 specifies the period of time that an applicant has to respond to an objection to registration raised by the Secretary of State. The response period is increased from 60 days to 90 days.

Section 93.84 is updated to permit suspension of action by the Secretary of State and to change the response period from 60 days to 90 days.

Section 93.86, in accordance with HB 3141, provides that applicant's means of responding to a refusal of registration is limited to bringing an action to compel registration.

Section 93.87 changes the time period of abandonment from 60 days to 90 days from the date of mailing of an action by an examiner.

Section 93.89, in accordance with HB 3141, provides applicant's means of seeking judicial review of the Secretary's registration of a mark or refusal to register a mark.

Section 93.91 of the proposed rules clarifies the circumstances in which an amendment to the application is permissible.

Section 93.101 specifies that, upon registration, a certificate of registration will be issued. A file-stamped copy of the application will only be returned to the applicant if the application and all supporting materials were submitted in duplicate.

Section 93.102 sets forth the information to be contained in the certificate of registration. In addition to the other elements required by HB 3141, certificates of registration will contain a reproduction of the mark.

Section 93.113 specifies the manner for requesting a corrected certificate.

Section 93.114 sets forth the procedures for correcting a mistake in the record made by the Secretary of State.

Section 93.121 sets forth the term of registration and renewal, as provided by HB 3141. The period of registration and renewal has been reduced from ten years to five years.
Section 93.122 sets forth the period of time a registrant has to renew a registered mark. Pursuant to HB 3141, the renewal period begins one year before the expiration of the mark and lasts for six months. However, registrants will also be given a grace period for six months immediately preceding the expiration date of a registration, during which an application for registration may also be submitted.

Section 93.123 specifies that an application for renewal of a registration must include a verified statement setting forth the goods and/or services in connection with which the mark is being used and that the renewal must include at least one specimen of the mark, per class, as actually used.

Section 93.124 is updated to change the response time from 60 days to 90 days.

Section 93.131 is updated to include the requirement that the Secretary of State issue an updated certificate of registration upon the filing of assignment of registration.

Section 93.142 is updated to provide for the Secretary of State to partially cancel a registration in certain circumstances.

Section 93.143 is updated to provide the circumstances in which a registered mark may be judicially cancelled.

Section 93.151 sets forth the recordation fees for trademark filings as required by HB 3141. The fees will remain consistent with current fees, with the exception of the fee for filing an assignment of registration. The fee for filing an assignment of registration is increased from $10 to $25 to account for the requirement that the Secretary of State issue a new certificate.

No comments were received concerning the proposed repeals and new sections.

SUBCHAPTER A. GENERAL INFORMATION AND CORRESPONDENCE

1 TAC §§93.1 - 93.6
STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 31, 2012.
TRD-201203976
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: September 1, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER B. REPRESENTATION

1 TAC §§93.61 - 93.69
STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lorna Wassdorf
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For further information, please call: (512) 463-5562

SUBCHAPTER C. APPLICATION FOR REGISTRATION

1 TAC §§93.51 - 93.55
STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: September 1, 2012
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For further information, please call: (512) 463-5562

SUBCHAPTER D. THE WRITTEN APPLICATION

1 TAC §§93.61 - 93.69
STATUTORY AUTHORITY
The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Loma Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: September 1, 2012
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For further information, please call: (512) 463-5562

SUBCHAPTER E. DRAWING
1 TAC §§93.81, 93.82

STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loma Wassdorf
Director, Business and Public Filings
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For further information, please call: (512) 463-5562

SUBCHAPTER F. SPECIMENS
1 TAC §§93.91 - 93.94

STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

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Loma Wassdorf
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For further information, please call: (512) 463-5562

SUBCHAPTER H. EXAMINATION OF AN APPLICATION AND ACTION BY APPLICANTS
1 TAC §§93.111 - 93.118

STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf
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For further information, please call: (512) 463-5562

SUBCHAPTER I. AMENDMENTS
1 TAC §§93.131 - 93.134
STATUTORY AUTHORITY
The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-5562

SUBCHAPTER J. ALLOWANCE OF REGISTRATION
1 TAC §93.141
STATUTORY AUTHORITY
The repeal is adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Business and Public Filings
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For further information, please call: (512) 463-5562

SUBCHAPTER K. CERTIFICATE
1 TAC §§93.151 - 93.154
STATUTORY AUTHORITY
The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

SUBCHAPTER L. TERM AND RENEWAL
1 TAC §§93.161 - 93.164
STATUTORY AUTHORITY
The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-5562

37 TexReg 6290 August 17, 2012 Texas Register
SUBCHAPTER M. ASSIGNMENT OF MARKS AND RECORDATION OF OTHER INSTRUMENTS

1 TAC §93.171, §93.172

STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

SUBCHAPTER N. CANCELLATION OF REGISTRATION

1 TAC §§93.181 - 93.184

STATUTORY AUTHORITY

The repeals are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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Proposal publication date: June 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER A. GENERAL INFORMATION AND CORRESPONDENCE

1 TAC §§93.1 - 93.6

STATUTORY AUTHORITY

The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Lorna Wassdorf
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Proposal publication date: June 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER B. REPRESENTATION

1 TAC §§93.11 - 93.15

STATUTORY AUTHORITY

The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
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For further information, please call: (512) 463-5562
Lorna Wassdorf  
Director, Business and Public Filings  
Office of the Secretary of State  
Effective date: September 1, 2012  
Proposal publication date: June 29, 2012  
For further information, please call: (512) 463-5562

SUBCHAPTER C. SUBMISSION REQUIREMENTS
1 TAC §§93.21 - 93.24
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Director, Business and Public Filings  
Office of the Secretary of State  
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For further information, please call: (512) 463-5562

SUBCHAPTER D. THE WRITTEN APPLICATION
1 TAC §§93.31 - 93.40
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf  
Director, Business and Public Filings  
Office of the Secretary of State  
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For further information, please call: (512) 463-5562

SUBCHAPTER E. DRAWING
1 TAC §93.51, §93.52
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

TRD-201203994

SUBCHAPTER F. SPECIMENS
1 TAC §§93.61 - 93.63
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. CLASSIFICATION

1 TAC §§93.71, §93.72

STATUTORY AUTHORITY

The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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TRD-201203995

Loma Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: September 1, 2012
Proposal publication date: June 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER I. AMENDMENTS

1 TAC §§93.91 - 93.94

STATUTORY AUTHORITY

The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Loma Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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Proposal publication date: June 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER J. ALLOWANCE OF REGISTRATION

1 TAC §§93.101, §93.102

STATUTORY AUTHORITY

The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

TRD-201203998
SUBCHAPTER K. CORRECTIONS
1 TAC §§93.111 - 93.115
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5562

SUBCHAPTER L. TERM AND RENEWAL
1 TAC §§93.121 - 93.124
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201204000

SUBCHAPTER M. ASSIGNMENT OF MARKS AND RECORDATION OF OTHER INSTRUMENTS
1 TAC §93.131, §93.132
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
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Proposal publication date: June 29, 2012
For further information, please call: (512) 463-5562

SUBCHAPTER N. CANCELLATION OF REGISTRATION
1 TAC §§93.141 - 93.144
STATUTORY AUTHORITY
The new rules are adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.
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For further information, please call: (512) 463-5562

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SUBCHAPTER O. FEES

1 TAC §93.151  
STATUTORY AUTHORITY  
The new rule is adopted under the general rulemaking authority in §2001.004 of the Government Code, which requires state agencies to adopt rules regarding the nature and requirements of all formal and informal procedures. Furthermore, the authority of the Secretary of State to make rules regarding state trademarks is implied in §16.066 of the Business & Commerce Code, as amended by HB 3141.

No other code or statute is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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For further information, please call: (512) 463-5562

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PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.9  
The Commission on State Emergency Communications (CSEC) adopts the repeal of §251.9, concerning guidelines for the use by Regional Planning Commissions (RPCs) of allocated 9-1-1 Funds service fees to maintain the 9-1-1 Database. The repeal of the section is adopted without changes to the proposal as published in the May 25, 2012, issue of the Texas Register (37 TexReg 3771).

REASONED JUSTIFICATION  
Current practice regarding the use of 9-1-1 Funds for 9-1-1 Database maintenance is for the RPCs to self-provision or contract with counties and/or vendors for maintenance deliverables, as opposed to the cost components approach in current §251.9(e). Additionally, the requirements in §251.9(a) - (d) are incorporated into CSEC’s rules and Program Policy Statements (PPS), including 1 TAC §251.1, Regional Strategic Plans for 9-1-1 Service; 1 TAC §251.12, Contracts for 9-1-1 Service; PPS 033, Regional Planning Commission Strategic Planning; PPS 027, Contracts for 9-1-1 Service; and PPS 017, Certification of Interlocal Agreements.

The repeal of §251.9 reflects the trend toward regionalization by the RPCs in which an RPC retains responsibility for 9-1-1 Database maintenance. Repealing §251.9 allows the RPCs to enter into deliverables-based contracts for 9-1-1 Database maintenance with counties and/or vendors consistent with their approved regional strategic plans.

No comments were received regarding the proposed repeal of §251.9.

STATEMENT OF AUTHORITY  
The repeal is adopted pursuant to the Health and Safety Code §§771.051, 771.055, 771.056, 771.057, 771.061, 771.075, 771.0751, 771.078, 771.079.

No other statute, article, or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on August 6, 2012.  
TRD-201204112  
Patrick Tyler  
General Counsel  
Commission on State Emergency Communications  
Effective date: August 26, 2012  
Proposal publication date: May 25, 2012  
For further information, please call: (512) 305-6930

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CHAPTER 252. ADMINISTRATION

1 TAC §252.6  
The Commission on State Emergency Communications (CSEC) adopts the amendments to §252.6, concerning the administration, including distribution, of wireless and prepaid wireless emergency service fees, without changes to the proposed text as published in the May 25, 2012, issue of the Texas Register (37 TexReg 3772).

REASONED JUSTIFICATION  
Section 252.6 provides the procedures by which CSEC determines the proportionate amount of wireless emergency services fees remitted under Health and Safety Code §771.0711 and attributable to each Regional Planning Commission and Emergency Communication District (ECD); and distributes the proportionate amount to each ECD not participating in the state 9-1-1 program.

Section 252.6 is amended to account for the distribution of prepaid wireless emergency services remitted under Health and Safety Code §771.0712 (added by the Texas Legislature in 2009, to be effective in 2010), to clarify CSEC’s obligation to distribute funds to non-participating ECDs, and to distribute to each non-participating ECD the proportionate interest earned and credited by the Comptroller of Public Accounts on remitted wireless and prepaid wireless emergency service fees.

CSEC received no comments on the proposed amendments to §252.6.

STATEMENT OF AUTHORITY  

ADOPTED RULES  August 17, 2012  37 TexReg 6295
The amendments are adopted pursuant to the Health and Safety Code §§771.051, 771.074, 771.0711(c), 771.0712(a) and 771.078(b)(2).

No other statute, article, or code is affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Patrick Tyler
General Counsel
Commission on State Emergency Communications
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For further information, please call: (512) 305-6930

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.458

The Texas Health and Human Services Commission (HHSC) adopts new §355.458, concerning supplemental payments to non-state government-owned intermediate care facilities for individuals with an intellectual disability or related conditions (ICFs/IID). The new section is adopted with changes to the proposed text as published in the May 4, 2012, issue of the Texas Register (37 TexReg 3279). The text of the rule will be republished.

Background and Justification

Federal law and regulations establish the maximum payment for which Medicaid will provide federal matching funds. The maximum payment is called the upper payment limit (UPL). Federal law gives states flexibility regarding payments to health care providers, but stipulates that, in general, Medicaid payments for any class of providers can be no higher than the amount Medicare would pay for the same service. Therefore, Medicare's equivalent payment for a service within a specific class of providers is the UPL for Medicaid payments for that class.

This new rule establishes the methodology for determination and payment of supplemental UPL payments for a specific class of ICFs/IID defined as non-state government-owned ICFs/IID. Under this rule, non-state government-owned ICFs/IID may apply to receive supplemental payments determined in accordance with Medicaid UPL provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272.

The maximum Medicaid supplemental payment amount for each participating non-state government-owned ICF/IID is equal to its proportionate share of the total supplemental payment amount calculated for all non-state government-owned ICFs/IID. The new rule outlines how the supplemental payment will be determined.

HHSC is adopting the new rule with revisions to the proposed text in order to change the term "intermediate care facility for persons with mental retardation (ICF/MR)" to "intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID)." This new term has the same meaning as the term "intermediate care facility for individuals who are intellectually disabled (ICF/IID)," used in the Centers for Medicare
Supplemental Payments to Non-State Government-Owned Facilities.

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for intermediate care facility for individuals with an intellectual disability or related conditions (ICF/IID) services provided by eligible non-state government-owned ICFs/IID.

(b) Definitions. When used in this section, the following definitions apply:

1. Aggregate upper payment limit--A reasonable estimate of the amount that would be paid for the services furnished by non-state government-owned ICFs/IID under Medicare payment principles, as calculated in subsection (f) of this section.

2. HHSC--The Texas Health and Human Services Commission or its designee.

3. Intergovernmental transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

4. Medicaid supplemental payment limit--The maximum supplemental payment available to a participating non-state government-owned ICF/IID for a specific Medicaid supplemental payment limit calculation period as calculated in subsection (f) of this section.

5. Medicaid supplemental payment limit calculation period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated.

6. Non-state government-owned ICF/IID--An ICF/IID where a non-state governmental entity is party to the facility’s Medicaid contract.

7. Non-state governmental entity--A community center established under Chapter 534, Subchapter A of the Texas Health and Safety Code or a hospital authority, hospital district, healthcare district, city, or county.

8. Public funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the governmental entity that is party to the Medicaid contract of the ICF/IID identified in subsection (c) of this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds.

(c) Eligible ICFs/IID.

1. Supplemental payments are available under this section to all non-state government-owned ICFs/IID that comply with the requirements described in subsection (d) of this section.

2. An ICF/IID participating in this supplemental payment program must notify the HHSC Rate Analysis Department of changes in ownership that may affect the ICF/IID’s continued eligibility within 30 days after such change.

3. An ICF/IID that has not received a payment under this supplemental payment program for four consecutive quarters is ineligible for future supplemental payments unless the ICF/IID applies again for the supplemental payment program in accordance with subsection (d) of this section.

(d) Required application. Before a non-state government-owned ICF/IID may receive supplemental payments under this section, the appropriate governmental entity must certify certain facts, representations, and assurances regarding program requirements.

1. The appropriate governmental entity must certify the following facts on a form prescribed by HHSC before the first day of the next scheduled Medicaid supplemental payment limit calculation period in order for the ICF/IID to receive a supplemental payment for that period:

   A. That a non-state governmental entity is party to the ICF/IID’s Medicaid contract.

   B. That all funds transferred to HHSC via IGT for use as the state share of supplemental payments are public funds.

   C. That no part of any supplemental payment paid to the ICF/IID under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the ICF/IID’s receipt of the supplemental funds.

   D. That the person signing the certification on behalf of the ICF/IID is legally authorized to bind the ICF/IID and to certify the matters described in the application; and

2. The ICF/IID is eligible for supplemental payments for Medicaid supplemental payment limit calculation periods that begin after HHSC receives completed application forms from the appropriate governmental entity.

(e) Source of funding.

1. State funding for supplemental payments authorized under this section is limited to and obtained through IGTs of public funds from the governmental entity that is party to the Medicaid contract of the ICF/IID identified in subsection (c) of this section.

2. An IGT that is not received by the date specified by HHSC may not be accepted. In such a situation, the IGT will be returned to the governmental entity and the ICF/IID will not be eligible to receive a supplemental payment.

(f) Medicaid supplemental payment limits.

1. The aggregate supplemental payment amount for non-state government-owned ICFs/IID is calculated for each Medicaid supplemental payment limit calculation period by taking the difference between the aggregate upper payment limit from subparagraph (A) of this paragraph and the aggregate Medicaid payment from subparagraph (B) of this paragraph:

   A. The aggregate upper payment limit for non-state government-owned ICFs/IID will be calculated based on Medicare payment principles and in accordance with the Medicaid upper pay-
ment limit provisions codified at Title 42 Code of Federal Regulations (CFR) §447.272. The aggregate upper payment limit is equal to the sum of the Medicare-equivalent payments for all non-state government-owned ICFs/IID. The Medicare-equivalent payment for each non-state government-owned ICF/IID is calculated as follows based on data from the most recent reliable Medicaid cost report:

(i) Determine the Medicare adjusted cost by subtracting ancillary and fixed capital costs from total Medicaid allowable costs and multiplying the remaining costs by 1.12.

(ii) Determine the Medicare adjusted cost per day of service by dividing the value from clause (i) of this subparagraph by the total days of service.

(iii) Determine the Medicare-equivalent payment by multiplying the dividend from clause (ii) of this subparagraph by the total Medicaid days of service.

(B) The aggregate Medicaid payment for non-state government-owned ICFs/IID prior to the supplemental payment will be the sum of Medicaid Level of Need (LON) payments for all non-state government-owned ICFs/IID as captured on the most recent reliable Medicaid cost report.

(2) The Medicaid supplemental payment limit for each participating non-state government-owned ICF/IID for each Medicaid supplemental payment limit calculation period will be determined by dividing that facility's Medicaid units of service during the Medicaid supplemental payment limit calculation period by the total Medicaid units of service during the Medicaid supplemental payment limit calculation period for all non-state government-owned ICFs/IID, multiplying the resulting percentage by the aggregate supplemental payment amount from paragraph (1) of this subsection, and dividing the resulting product by four.

(g) Payment frequency. HHSC will distribute supplemental payments to participating non-state government-owned ICFs/IID on a quarterly basis subsequent to the Medicaid supplemental payment limit calculation period.

(h) Supplemental payment methodology.

(1) HHSC will give notice of the non-state government-owned ICF/IID Medicaid supplemental payment limits determined in subsection (f) of this section, the maximum IGT amount that can be provided for each participating ICF/IID based on the Federal Medical Assistance Percentage (FMAP) in place at the time notice is given, and the deadline for completing the transfer.

(2) The amount of the supplemental payment to the ICF/IID will be calculated in proportion to the amount transferred by the governmental entity.

(A) For governmental entities that own a single ICF/IID:

(i) If the governmental entity transfers the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/IID it owns, each of the ICFs/IID will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection, the ICF/IID will receive a supplemental payment that is proportionate to the percentage of the maximum IGT that was actually transferred.

(B) For governmental entities that own multiple ICFs/IID:

(i) If the governmental entity transfers the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/IID it owns, each of the ICFs/IID will receive the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section.

(ii) If the governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection for all of the ICFs/IID it owns, each of the ICFs/IID will receive a proportion of the Medicaid supplemental payment limit amount calculated for it in subsection (f) of this section based on the proportion of the total maximum IGT for all of the ICFs/IID owned by the governmental entity that was actually transferred.

(C) Supplemental payments to remaining non-state government-owned ICFs/IID will not be increased due to the failure of a governmental entity to transfer the maximum IGT described in paragraph (1) of this subsection.

(3) A governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year will be allowed to fund the remaining Medicaid supplemental payment limit during the fourth quarter of that fiscal year, subject to the following:

(A) HHSC will give notice of the remaining Medicaid supplemental payment limits and the maximum IGT that can be provided for each non-state government-owned ICF/IID. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(B) Following the deadline for notification described in subparagraph (A) of this paragraph, if HHSC determines that the supplemental payments for the federal fiscal year will exceed the applicable aggregate supplemental payment amount for non-state government-owned ICFs/IID, HHSC will reduce the amount of the transfer for the fourth-quarter payment under this clause proportionately for each participating ICF/IID in an amount sufficient to ensure compliance with the applicable aggregate supplemental payment amount.

(4) The amount of the payment to the ICF/IID will be calculated using the FMAP in place when HHSC gave notice as described in paragraph (1) or (3) of this subsection, as applicable.

(i) Recoupment.

(1) If payments under this section result in overpayment to an ICF/IID, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services (CMS) of federal participation related to an ICF/IID's receipt or use of supplemental payments authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments made under the Texas Administrative Code, the Code of Federal Regulations and state and federal statutes. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the ICF/IID to which an overpayment was made or against which any disallowance was directed.

(B) If, within 30 days of the ICF/IID's receipt of HHSC's written notice of recoupment, the ICF/IID has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all Medicaid payments from the ICF/IID until HHSC has recovered an amount.

37 TexReg 6298  August 17, 2012  Texas Register
equal to the amount overpaid or disallowed. If funds identified for recoupment cannot be repaid from the ICF/IID's Medicaid payments, the governmental entity that owns the ICF/IID will be liable for any additional payment due to HHSC or its designee. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the governmental entity and will bar the governmental entity from receiving any new contracts with HHSC or its designees until repayment is made in full.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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TITLE 16. ECONOMIC REGULATION
PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION
CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS
BY LICENSEES AND PERMITTEES
16 TAC §41.23

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §41.23, concerning Basic General Records Required, without changes to the proposed text as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2847). The rule will not be republished.

In Authentic Beverages Company, Inc. vs. Texas Alcoholic Beverage Commission, No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. Although §41.23 was not declared unconstitutional, the commission determines that it is appropriate to amend it to implement changes required by the Authentic Beverages Order.

Because the commission has determined that manufacturers and brewers should have options regarding the labeling of their products, it will no longer be possible to rely on use of the terms "beer", "ale" or "malt liquor" to determine how a product should be taxed and where it may be sold. It is necessary, therefore, to require that malt beverages be identified on invoices. Since the invoices must accompany the product throughout the chain of distribution from the producer to the retailer, this will allow everyone in the chain (as well as regulatory officials, including the agency) to identify the product and classify it appropriately. This will not require invoices be produced or carried that are not already required, but simply that a notation be made on those invoices that will allow the agency (and others) to properly classify the product. The amendments grant flexibility on specifically how the product must be identified, as opposed to mandating use of a specific type of notation.

The commission received comments on the proposed rule from the Wholesale Beer Distributors of Texas (WBDT) and Anheuser-Busch Companies.

WBDT requested that two sentences be added to the end of subsection (a) stating: "An invoice for malt beverages must delineate the actual shipping and freight cost separate from the price of the product. The price of the product must be shown independently of any other cost." WBDT contends that the proposed language would "ensure that the current practices of some manufacturers to incorporate shipping and freight costs into the price of a beverage would cease and a clear delineation of the cost of the product would be available to regulators and the distributors to determine the appropriate taxation and price of the product."

In oral comments at a May 2, 2012, public hearing conducted by the staff of the commission, WBDT indicated that its proposed language would help address reach-back pricing.

Anheuser-Busch asserts that WBDT attempted to add similar language into legislation in the 2011 legislative session but that the legislature chose not to add the language "for both business and policy related reasons." According to Anheuser-Busch, "the legislature failed to see a state government interest in pricing alcohol from manufacturer to wholesaler, to this extent."

"Reach-back pricing" is a scheme whereby a manufacturer increases the price of a product to a distributor in a subsequent sale to recoup a portion of the distributor's profit on its previous sale to a retailer. For example, manufacturer M sells a product to distributor D at $10.00, anticipating that D will sell it to retailer R for $11.00. Instead, M discovers that X sold it to R for $12.00. The next time M sells the product to X, it increases the price to $11.00 just to account for D's "increased" profit on its sale to R. This practice undermines the independence of the distributor and its ability to set its own prices.

The commission does not regulate prices at either the manufacturer to distributor level, at the distributor to retailer level, or even at the retailer to consumer level. Thus, deciding whether a particular price is part of a reach-back pricing scheme is difficult. However, the commission has previously investigated allegations of reach-back pricing and has found such schemes. It has done so by investigating patterns of pricing over a long term, using current invoices. The language suggested by WBDT does not solve the reach-back pricing problem, because the manufacturer is generally free to set its own prices anyway and need not disguise an increase as a freight and shipping charge.

The commission declines to accept WBDT's suggested language because it seems to involve the commission too deeply in pricing decisions without actually resolving the issue it is intended to address. Furthermore, it is not necessary for the commission's benefit in order to allow it to investigate allegations of reach-back pricing. Finally, the commission disagrees with WBDT's assertion that it would help regulators determine the appropriate taxation of the product. Beer is taxed at a fixed percentage rate per barrel, without regard to the price charged for it.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.
CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

16 TAC §45.71

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.71, concerning Definitions, without changes to the proposed text as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2848). The rule will not be republished.

In Authentic Beverages Company, Inc vs. Texas Alcoholic Beverage Commission, No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. Although §45.71 was not declared unconstitutional, the commission determines that it is appropriate to amend it to clarify the use of terms in light of the Authentic Beverages Order. The definitions of “beer” and “malt liquor” are amended.

Section 45.71 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that these amendments are necessary.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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16 TAC §45.77

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.77, concerning Class and Type, without changes to the proposed text as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2849). The rule will not be republished.

In Authentic Beverages Company, Inc vs. Texas Alcoholic Beverage Commission, No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be violations of the First Amendment to the United States Constitution. Section 45.77 was declared unconstitutional and the commission was enjoined from enforcing it. The amendments conform §45.77 to the Court’s decision.

The amendments give manufacturers and brewers two options for labeling their products. The first option is to continue to use the definitions of “beer,” “ale” and “malt liquor” found in Alcoholic Beverage Code §1.04. If they elect to use this option, they may but are not required to include the product’s percentage alcohol by volume (ABV) on the label. The other option is to use any truthful description of the class and style of the malt beverage that is commonly recognized in the industry. If this description does not match the definitions of “beer,” “ale” or “malt liquor” in Alcoholic Beverage Code §1.04, then the class or style description must be accompanied by the product’s percentage alcohol by volume on the label.

Section 45.77 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that this amendment is necessary.

The commission received a written comment on the proposed rule from the Beer Institute (BI) and the National Association of Beverage Importers (NABI). BI and NABI assert that the intent of the existing labeling requirements was to serve as a resource for regulators and not as a way to inform the public about specific malt beverage products. They contend that there is ample information available to inform regulators without the need for specific labeling requirements, and cite the inherent transparencies of modern technologies associated with product registration and the chain of distribution. Specifically, they indicate that the commission will receive adequate information to monitor shipments and taxes through the inclusion of ABV on invoices and the product information provided as part of the registration process. They also note that most providers provide alcohol content information on their brand websites.

BI and NABI also state that some members of the malt beverage industry elect to disclose ABV on the label, but some choose not to do so for marketing reasons. They note that many brewers dislike ABV disclosures because they see them as possible triggers for strength wars. In support of this proposition, they cite testimony from the Wisconsin State Brewers Association before the Ways and Means Committee of the U.S. House of Representatives in 1935. They assert that ABV disclosures do not always result in consumers self-selecting lower alcohol products, and that restricting disclosure of a particular product’s ABV is a good way to decrease the extent to which consumers will select a product based on its higher ABV. They also indicate that it has been argued that not disclosing ABV relieves marketplace pres-
ures to produce beer on the basis of alcohol content, resulting in the long term in beers with lower alcohol content.

If the commission believes that some labeling information is required, BI and NABI prefer a third option: using industry standards for "beer," "ale" and "malt liquor" if a symbol (such as "TX+") is also included when the ABV exceeds 5.1 percent. They assert that this third option will not create a risk of strength wars or serve as an inducement for consumers to select higher potency products. The third option would benefit the brewer/importer industry by reducing the burden of complying with Texas-specific labeling requirements.

Texans Standing Tall (TST) filed a written comment expressing a preference to require malt beverage labels to include ABV as well as the number of servings of alcohol per container, in order to provide consumers information needed to make an informed decision regarding their alcohol consumption. At a minimum, TST contends that ABV should be required to be written (not abbreviated) in large type on the label in a consistent form and obvious location on the container.

TST asserts that the inclusion of ABV on malt beverage labels provides a tool for parents, law enforcement officers, store clerks and the community as a whole to prevent underage alcohol use. Specifically, TST states that it has used the ABV label on alcohol energy drinks and "alcopops" to educate parents and teachers, as well as other adults, to distinguish the alcoholic drinks from similar looking non-alcoholic drinks.

TST notes that research indicates that the majority of adult consumers of alcohol drink in a moderate manner but underestimate the amount of alcohol it takes to become intoxicated. It states that further research indicates that when provided appropriate information regarding the alcohol consumer and intoxication, adults who wish to drink moderately alter their behavior.

TST notes that the commission has already developed an educational campaign and resources which can be used to educate parents and store clerks to look for the ABV label.

TST indicates that during the federal Alcohol and Tobacco Tax and Trade Bureau's 2007 proposed rulemaking on alcoholic beverage labels, the importance of including ABV on labels for consumers was echoed in written comments submitted by the Beer Institute, National Beer Wholesalers Association and Miller.

TST considers the use of a symbol (such as the "OK+" used in Oklahoma) insufficient in educating consumers on the alcohol content of beverages and not an adequate substitute for ABV.

Without agreeing with or disputing the contention made by BI and NABI that the intent of the existing label requirements was to serve as a resource for regulators, the commission understands that the label requirements have also served as a means of letting Texans know at least the relative strengths of malt beverages labeled "beer" and those (stronger) malt beverages labeled "ale" or "malt liquor." In considering what, if any, label requirement should be imposed today, the commission believes that using the label to inform the public of the strength of malt beverages is appropriate.

Consumers can be educated to look for the "alcohol by volume" statement on the label. If it is not there, they can rely on a product that is labeled "beer" containing approximately 5.1 percent alcohol by volume or less and a product that is labeled "ale" or "malt liquor" containing more than that amount. Information about the alcohol content of a product is necessary for consumers who wish to make informed judgments about consumption. Requiring this kind of information furthers the state's interest in protecting the welfare, health, peace, temperance and safety of the people of the state. Alcoholic Beverage Code §1.03.

The commission shares the concern expressed by BI and NABI that placing ABV on the label may be an invitation to strength wars. However, as BI and NABI point out, modern technologies are increasingly transparent. If a manufacturer has success in the market with a higher alcohol product, it is very likely to be matched by its competitors regardless of whether the ABV is on the label for consumers to see.

The commission also shares the concern expressed by BI and NABI that placing ABV on the label may tempt some consumers to make purchasing decisions based on obtaining the highest ABV. However, with modern technologies, those who are interested in using high ABV as the sole criterion for which malt beverage they will buy are already able to find and share that information. As BI and NABI point out, most manufacturers have that information on their websites. Experience with flavored malt beverages has shown us that those who want to find high alcohol products can easily do so, regardless of the ABV.

The commission agrees with TST and TTB that the benefits of educating consumers about products with higher alcohol content outweigh the risks.

The commission also agrees with TST that providing ABV on the label will help the moderate drinker to understand how much alcohol is being consumed.

The commission disagrees with TST's suggestion that the label should be required to state the number of servings of alcohol per container. Identifying and requiring serving sizes as a matter of law would be very difficult because there are many variables. However, identifying illustrative serving sizes for educational purposes is appropriate and useful.

The commission notes that Texas will not be the only state requiring that ABV be placed on malt beverage labels in certain circumstances. Oregon Administrative Rule 845-010-0205 states: "Oregon Revised Statutes §471.448 prohibits calling a malt beverage "beer" if it contains more than 6 percent alcohol by volume. All malt beverages exceeding six percent alcohol by volume must show in conspicuous type on the label or container the alcoholic content by volume within a tolerance not to exceed five-tenths of one percent."

The commission recognizes that requiring all malt beverage products to be labeled with ABV would impose significant costs on some producers, and therefore retains the option that they be allowed to continue to use the definitions found in the Alcoholic Beverage Code. As indicated previously, Texans already have some sense of the relative strengths associated with those traditional terms.

The commission disagrees that a third option (i.e., allowing the use of a symbol such as "TX+" for products traditionally classified as ale or malt liquor in Texas) is appropriate. Educating consumers what to look for on a bottle or can is made more difficult with a third option and the commission agrees with TST that the use of a symbol by itself is not an adequate substitute for either of the other options.

The commission notes that the TTB has certain label requirements when a state requires a statement of alcohol content, as Texas is doing here in certain circumstances (i.e., where the use of the term "beer," "ale" or "malt liquor" on the label is not consis-
tent with the definition of the term found in the Alcoholic Beverage Code). Those TTB requirements (27 CFR §7.71 and §7.28) address the form of the statement, tolerances, type size, legibility and placement.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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16 TAC §45.79
The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.79, concerning Alcoholic Content, without changes to the proposed text as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2851). The rule will not be republished.

In Authentic Beverages Company, Inc vs. Texas Alcoholic Beverage Commission, No. A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex., Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be violations of the First Amendment to the United States Constitution. Section 45.79(f) was declared unconstitutional and the commission was enjoined from enforcing it. Accordingly, that subsection is being deleted. Additionally, paragraphs (c)(3) and (4) are amended to address other requirements in the Court’s Order. Those paragraphs currently limit in some situations the level of tolerance otherwise allowed for products labeled “beer,” “ale” or “malt liquor.” The proposed amendments remove the limitation for tolerances as long as the alcoholic content is stated on the label. The amendments to §45.79, in conjunction with amendments to §45.77 that are being simultaneously adopted by the commission, conform §45.79 to the Court’s decision.

The commission received a written comment on the proposed rule from the Beer Institute (BI) and the National Association of Beverage Importers (NABI). BI and NABI assert that the intent of the existing labeling requirements was to serve as a resource for regulators and not as a way to inform the public about specific malt beverage products. They contend that there is ample information available to inform regulators without the need for specific labeling requirements, and cite the inherent transparencies of modern technologies associated with product registration and the chain of distribution. Specifically, they indicate that the commission will receive adequate information to monitor shipments and taxes through the inclusion of ABV on invoices and the product information provided as part of the registration process. They also note that most providers provide alcohol content information on their brand websites.

BI and NABI also state that some members of the malt beverage industry elect to disclose ABV on the label, but some choose not to do so for marketing reasons. They note that many brewers dislike ABV disclosures because they see them as possible triggers for strength wars. In support of this proposition, they cite testimony from the Wisconsin State Brewers Association before the Ways and Means Committee of the U.S. House of Representatives in 1935. They assert that ABV disclosures do not always result in consumers self-selecting lower alcohol products, and that restricting disclosure of a particular product’s ABV is a good way to decrease the extent to which consumers will select a product based on its higher ABV. They also indicate that it has been argued that not disclosing ABV relieves marketplace pressures to produce beer on the basis of alcohol content, resulting in the long term in beers with lower alcohol content.

If the commission believes that some labeling information is required, BI and NABI prefer a third option: using industry standards for “beer,” “ale” and “malt liquor” if a symbol (such as “TX+”) is also included when the ABV exceeds 5.1 percent. They assert that this third option will not create a risk of strength wars or serve as an inducement for consumers to select higher potency products. The third option would benefit the brewer/importer industry by reducing the burden of complying with Texas-specific labeling requirements.

Texans Standing Tall (TST) filed a written comment expressing a preference to require malt beverage labels to include ABV as well as the number of servings of alcohol per container, in order to provide consumers information needed to make an informed decision regarding their alcohol consumption. At a minimum, TST contends that ABV should be required to be written (not abbreviated) in large type on the label in a consistent form and obvious location on the container.

TST asserts that the inclusion of ABV on malt beverage labels provides a tool for parents, law enforcement officers, store clerks and the community as a whole to prevent underage alcohol use. Specifically, TST states that it has used the ABV label on alcohol energy drinks and “alcopops” to educate parents and teachers, as well as other adults, to distinguish the alcoholic drinks from similar looking non-alcoholic drinks.

TST notes that research indicates that the majority of adult consumers of alcohol drink in a moderate manner but underestimate the amount of alcohol it takes to become intoxicated. It states that further research indicates that when provided appropriate information regarding the alcohol consumer and intoxication, adults who wish to drink moderately alter their behavior.

TST notes that the commission has already developed an educational campaign and resources, which can be used to educate parents and store clerks to look for the ABV label.

TST indicates that during the federal Alcohol and Tobacco Tax and Trade Bureau’s 2007 proposed rulemaking on alcoholic beverage labels, the importance of including ABV on labels for consumers was echoed in written comments submitted by the Beer Institute, National Beer Wholesalers Association and Miller.

TST considers the use of a symbol (such as the “OK+” used in Oklahoma) insufficient in educating consumers on the alcohol content of beverages and not an adequate substitute for ABV.

The commission notes that the commenters designated their comments as addressing proposed changes to both §45.79 and §45.77.
Without agreeing with or disputing the contention made by BI and NABI that the intent of the existing label requirements was to serve as a resource for regulators, the commission understands that the label requirements have also served as a means of letting Texans know at least the relative strengths of malt beverages labeled "beer" and those (stronger) malt beverages labeled "ale" or "malt liquor". In considering what, if any, label requirement should be imposed today, the commission believes that the use of the label to inform the public of the strength of malt beverages is appropriate.

Consumers can be educated to look for the "alcohol by volume" statement on the label. If it is not there, they can rely on a product that is labeled "beer" containing approximately 5.1 percent alcohol by volume or less and a product that is labeled "ale" or "malt liquor" containing more than that amount. Information about the alcohol content of a product is necessary for consumers who wish to make informed judgments about consumption. Requiring this kind of information furthers the state's interest in protecting the welfare, health, peace, temperance and safety of the people of the state. Alcoholic Beverage Code §1.03.

The commission shares the concern expressed by BI and NABI that placing ABV on the label may be an invitation to strength wars. However, as BI and NABI point out, modern technologies are increasingly transparent. If a manufacturer has success in the market with a higher alcohol product, it is very likely to be matched by its competitors regardless of whether the ABV is on the label for consumers to see.

The commission also shares the concern expressed by BI and NABI that placing ABV on the label may tempt some consumers to make purchasing decisions based on obtaining the highest ABV. However, with modern technologies, those who are interested in using high ABV as the sole criterion for which malt beverage they will buy are already able to find and share that information. As BI and NABI point out, most manufacturers have that information on their websites. Experience with flavored malt beverages has shown us that those who want to find high alcohol products can easily do so. Indeed, for those beverages, the federal Tax and Trade Bureau (TTB) already imposes a requirement that they be labeled with their ABV. The commission agrees with TST and TTB that the benefits of educating consumers about products with higher alcohol content outweigh the risks.

The commission also agrees with TST that providing ABV on the label will help the moderate drinker to understand how much alcohol is being consumed.

The commission disagrees with TST's suggestion that the label should be required to state the number of servings of alcohol per container. Identifying and requiring serving sizes as a matter of law would be very difficult because there are many variables. However, identifying illustrative serving sizes for educational purposes is appropriate and useful.

The commission notes that Texas will not be the only state requiring that ABV be placed on malt beverage labels in certain circumstances. Oregon Administrative Rule 845-010-0205 states: "Oregon Revised Statutes 471.448 prohibits calling a malt beverage beer if it contains more than six percent alcohol by volume. All malt beverages exceeding six percent alcohol by volume must show in conspicuous type on the label or container the alcoholic content by volume within a tolerance not to exceed five-tenths of one percent."

The commission recognizes that requiring all malt beverage products to be labeled with ABV would impose significant costs on some producers, and therefore retains the option that they be allowed to continue to use the definitions found in the Alcoholic Beverage Code. As indicated previously, Texans already have some sense of the relative strengths associated with those traditional terms.

The commission disagrees that a third option (i.e., allowing the use of a symbol such as "TX+" for products traditionally classified as ale or malt liquor in Texas) is appropriate. Educating consumers what to look for on a bottle or can is made more difficult with a third option, and the commission agrees with TST that the use of a symbol by itself is not an adequate substitute for either of the other options.

The commission notes that the TTB has certain label requirements when a state requires a statement of alcohol content, as Texas is doing here in certain circumstances (i.e., where the use of the term "beer", "ale" or "malt liquor" on the label is not consistent with the definition of the term found in the Alcoholic Beverage Code). Those TTB requirements (at 27 CFR §7.71 and §7.28) address the form of the statement, tolerances, type size, legibility and placement.

Section 45.79 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for readoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting the rule continue to exist, but that these amendments are necessary.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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16 TAC §45.82

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.82, concerning Prohibited Practices, without changes to the proposed text as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2852). The rule will not be republished.

In Authentic Beverages Company, Inc vs. Texas Alcoholic Beverage Commission, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be unconstitutional violations of the First Amendment. The section is amended to conform to the Court's decision. Section 45.82(f) was declared unconstitutional and the commission was enjoined from enforcing it. Accordingly, that subsection is being deleted.
No comments were received regarding adoption of the amendment.

The amendment is adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Martin Wilson
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16 TAC §45.90

The Texas Alcoholic Beverage Commission (commission) adopts amendments to §45.90, concerning Advertising: Prohibited Statements, without changes to the proposed text as published in the April 20, 2012, issue of the Texas Register (37 TexReg 2853). The rule will not be republished.

In Authentic Beverages Company, Inc vs. Texas Alcoholic Beverage Commission, A-10-CA-710-SS, 2011 WL 6396530 (W.D. Tex. Dec. 19, 2011), certain provisions of the Alcoholic Beverage Code and the rules of the commission were found to be violations of the First Amendment. The amendments conform §45.90 to the Court's decision. Section 45.90 was declared unconstitutional and the commission was enjoined from enforcing it. However, the plaintiffs in the lawsuit did not complain about all of the provisions of §45.90. As cited by the Court, plaintiffs' First Amendment challenges to the Alcoholic Beverage Code and the commission's rules were to those provisions that: prohibited breweries and distributors from telling consumers where their products can be bought; mandated the use of inaccurate statutory definitions of "beer," "ale" and "malt liquor" to describe malt beverages; and prohibited advertising the alcoholic content of brewery products and using words in advertising and labeling that suggest alcoholic strength. Plaintiffs' Motion for Summary Judgment specifically references Rule §45.90(c). (Emphasis added.) In partially granting Plaintiffs' Motion for Summary Judgment, the Court states that "Although the Code is free to define 'beer' and 'ale' as it sees fit, Texas may not compel malt beverage producers to use those terms, and only those terms, in advertising and labeling. Accordingly, all statutes and regulations that compel such speech; including commission rule §45.77 and §45.90 are declared unconstitutional." (Emphasis added.) Therefore, the amendments delete subsection (c) of §45.90 in its entirety. In addition, the amendments delete other provisions of the rule that seem to prohibit making truthful statements in advertising malt beverage products.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) adopts an amendment to §66.24, the repeal of §66.69, and new §66.79, concerning the state adoption of instructional materials. The amendment, repeal, and new section are adopted without changes to the proposed text as published in the June 8, 2012, issue of the Texas Register (37 TexReg 4147) and will not be republished. Section 66.24 addresses the review and renewal of contracts. Section 66.69 addresses ancillary materials. The proposed amendment, repeal, and new section incorporate changes to the instructional materials review and adoption process resulting from Senate Bill (SB) 6, 82nd Texas Legislature, First Called Session, 2011, and public comments presented at the April 2012 SBOE meeting.

SB 6, 82nd Texas Legislature, 2011, made significant changes pertaining to the review, adoption, and purchase of instructional materials and technological equipment for public schools. SB 6 changes include the establishment of the instructional materials allotment, including certification of alignment with the Texas essential knowledge and skills for instructional materials used by the district, and specification that a reference to a textbook means instructional materials. The statutory changes resulting from SB 6 necessitated revisions to rules in 19 TAC Chapter 66.

Proposed revisions to 19 TAC Chapter 66, Subchapters A-E, incorporating statutory changes resulting from SB 6, were approved by the SBOE for first reading and filing authorization at the January 2012 meeting. The SBOE approved the proposed revisions for second reading and final adoption at the April 2012 meeting. Also during the April 2012 meeting, additional revisions to 19 TAC Chapter 66, Subchapter B, were presented and approved by the SBOE for first reading and filing authorization. The SBOE took action to approve the additional revisions for second reading and final adoption during its July 2012 meeting, as follows.
Section 66.24, Review and Renewal of Contracts, was amended to require contract renewal prices to be mutually agreed upon between publishers and the commissioner.

Section 66.69, Ancillary Materials, was repealed to provide flexibility with instructional materials submissions.

New §66.79, Adding Content During the Review and Adoption Process, was added to address the amount of content that a publisher may add to instructional materials during the review and adoption process.

The adopted amendment, repeal, and new section have no new procedural and reporting implications. The adopted amendment, repeal, and new section have no locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

No comments were received regarding the proposed revisions.

19 TAC §66.24, §66.79

The amendment and new section are adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the Texas Education Code, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The amendment and new section implement the Texas Education Code, §7.102(c) and Chapter 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on August 3, 2012.

TRD-201204098

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: June 8, 2012
For further information, please call: (512) 475-1497

19 TAC §66.69

The repeal is adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of instructional materials.

The repeal implements the Texas Education Code, §7.102(c) and Chapter 31.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Cristina De La Fuente-Valadez
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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.36

The State Board of Education (SBOE) adopts an amendment to §74.36, concerning curriculum requirements. The amendment is adopted without changes to the proposed text as published in the June 8, 2012, issue of the Texas Register (37 TexReg 4148) and will not be republished. The section establishes requirements for elective courses on the Bible’s Hebrew Scriptures (Old Testament) and New Testament and their impact on the history and literature of western civilization. The adopted amendment removes the Texas essential knowledge and skills (TEKS) and related implementation language, in §74.36(d) adopted effective in 2008 that were superseded by the TEKS in 19 TAC §74.36(e) beginning with the 2011-2012 school year. The adopted amendment also removes references to the superseded TEKS.

House Bill 1287, 80th Texas Legislature, 2007, added the Texas Education Code, §28.011, requiring the SBOE to adopt TEKS for and allowing school districts to teach an elective course on the Hebrew Scriptures (Old Testament) and the New Testament and their impact on the history and literature of Western civilization. The SBOE adopted 19 TAC §74.36 effective September 1, 2008, to satisfy this requirement. The TEKS in this section mirror the TEKS for Independent Study in English and Special Topics in Social Studies. Revisions to the TEKS for Independent Study in English in 19 TAC Chapter 110 were adopted by the SBOE in March 2010 for implementation in the 2011-2012 school year. Revisions to the TEKS for Special Topics in Social Studies in 19 TAC Chapter 113 were adopted by the SBOE in May 2010 for implementation in the 2011-2012 school year. In November 2010, the SBOE adopted an amendment to 19 TAC §74.36, which included implementation language to coincide with implementation of the revised TEKS.

Following SBOE approval of proposed amendment to 19 TAC §74.36 for first reading and filing authorization at the April 2012 meeting, the proposal was submitted to the Attorney General for review. In accordance with TEC, §28.011(e), the proposal must be submitted to the Attorney General for review to ensure that the course complies with the First Amendment to the United States Constitution before the SBOE adopts the proposal.

In June 2012, the Attorney General’s Office responded that the proposal had been reviewed and concluded that the revisions are consistent with the First Amendment as well as the Supreme
Court's decisions purporting to interpret that constitutional provision.

The SBOE approved the proposed amendment to 19 TAC §74.36 for second reading and final adoption at the July 2012 meeting subsequent to receiving the response from the Attorney General's Office. The adopted amendment to 19 TAC §74.36 removes the superseded TEKS for Special Topics in Social Studies from subsection (d)(1) and the superseded TEKS for Independent Study in English from subsection (d)(2) and re-letters the remaining subsection accordingly. The adopted amendment also removes reference to the superseded TEKS.

The adopted amendment has no procedural and reporting requirements. The adopted amendment has no locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year. The earlier effective date is necessary to remove from rule TEKS that have been superseded as well as amend existing implementation language to avoid confusion. The effective date for the amendment is 20 days after filing as adopted.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; the TEC, §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the assessment instruments; and the TEC, §28.011, which authorizes the SBOE to adopt rules, subsequent to review of the proposal by the Attorney General, identifying the essential knowledge and skills of a course on the Bible's Hebrew Scriptures (Old Testament) and New Testament and their impact on the history and literature of Western Civilization.


This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
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CHAPTER 101. ASSESSMENT

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF THE ACADEMIC CONTENT AREAS TESTING PROGRAM

The Texas Education Agency (TEA) adopts the repeal of §101.3004 and new §101.3041, concerning implementation of the academic content areas testing program. The repeal and new section are adopted without changes to the proposed text as published in the June 15, 2012, issue of the Texas Register (37 TexReg 4302) and will not be republished. Section 101.3004 addresses performance standards. The adopted repeal and new section implement performance standards for the new assessments and reflect changes to the state assessment program beginning with the implementation of the State of Texas Assessments of Academic Readiness (STAAR) in the 2011-2012 school year.

House Bill (HB) 3, 81st Texas Legislature, 2009, made significant changes to the Texas student assessment program, including the requirement that the commissioner of education determine the various performance levels for assessments. To enact the requirements of HB 3, the adopted rule actions repeal 19 TAC §101.3004 and add new 19 TAC §101.3041 to implement performance standards for the STAAR end-of-course (EOC) assessments and account for the phaseing out of the Texas Assessment of Knowledge and Skills (TAKS) program.

Based on the TEC, §39.0241(a), adopted new 19 TAC §101.3041 specifies that responsibility for setting performance standards on all state-developed assessments belongs to the commissioner of education. Adopted new 19 TAC §101.3041 implements the phase-in of performance standards for the STAAR EOC assessments with Figure: 19 TAC §101.3041(b). The STAAR academic performance standards are the cut scores on the tests that identify student performance as falling in the following three levels: Level III: Advanced Academic Performance, Level II: Satisfactory Academic Performance, and Level I: Unsatisfactory Academic Performance.

A student is considered to have passed a given STAAR assessment if he or she earned a score at least as high as the cut score for Level II: Satisfactory Academic Performance. To receive a Texas diploma on the recommended high school program, a student is required to achieve the Level II performance standard on the Algebra II and English III EOC assessments.

A phase-in period will be implemented to provide school districts with time to improve instruction, provide additional professional development, increase teacher effectiveness, and close knowledge gaps. A four-year, two-step phase-in for Level II will be in place for all STAAR EOC assessments as follows: Phase-in standard 1 for the Level II standard: the standard for students first testing in a content area in 2012 and 2013; Phase-in standard 2 for the Level II standard: the standard for students first testing in a content area in 2014 and 2015; and Recommended Level II standard: the standard for students first testing in a content area in 2016 and beyond.

To receive a Texas diploma on the distinguished achievement high school program, a student is required to achieve the Level III performance standard on the Algebra II and English III EOC assessments.

The Level III standard for STAAR Algebra II, English III reading, and English III writing will have a two-year, one-step phase-in
for the Level III performance level as follows: Phase-in standard 1 for Level III: the Level III standard for students first testing in a content area in 2012 and 2013, and Recommended Level III standard: the Level III standard for students first testing in a content area in 2014 and beyond.

Per legislative requirements, the performance standards will be reviewed at least once every three years. During standards review, additional impact and validity study data will be examined, including data from longitudinal studies and studies evaluating the relationship between performance on the STAAR assessments and success in military service or workforce training, certification, or other credential programs. This ongoing review process will provide additional information to verify whether the established performance standards are appropriate or should be adjusted.

The minimum score requirement specified by the TEC, §39.025(a), is not considered a performance standard and is only relevant to STAAR EOC assessments. A student taking a STAAR EOC assessment must reach or exceed the minimum score, which is below the Level II standard, in order for the student to count his or her score in the cumulative score calculation required for graduation. The minimum score will vary by EOC assessment and will fall below the cut point dividing the Level I performance standard from the Level II standard.

Unlike the EOC student performance standards that were set based on recommendations from standard setting committees and research that established links between performance on STAAR and performance on other assessments, minimum scores were determined statistically for each STAAR EOC assessment based on the scale scores required to achieve Level II.

Adopted new 19 TAC §101.3041 also keeps the scale score standards for Grade 10 and exit level TAKS for students first enrolled in Grade 9 prior to the 2011-2012 school year or enrolled in Grade 10 or above in the 2011-2012 school year and removes the Grades 3-8 TAKS assessment standards. The scale score standards for Grade 10 and exit level TAKS are reflected in Figure: 19 TAC §101.3041(c). Grade 3-8 STAAR standards will be set in the fall of 2012.

Additionally, the adopted repeal and new rule will complete the reorganization of 19 TAC Chapter 101, Subchapter CC, due to the implementation of the STAAR program.

The adopted rule actions have no procedural and reporting implications beyond those that apply to all Texas students with respect to implementation of the new STAAR program. The adopted rule actions have minimal effect on the paperwork required and maintained by school districts, language proficiency assessment committees, and/or ARD committees in making and tracking assessment and accommodation decisions for Texas students.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began June 15, 2012, and ended July 16, 2012. No public comments were received.

19 TAC §101.3004

The repeal is adopted under the Texas Education Code (TEC), §39.0241(a), which authorizes the commissioner to determine the level of performance considered to be satisfactory on the assessment instruments; the TEC, §39.0241(a-1), which authorizes the commissioner of education, in collaboration with the commissioner of higher education, to determine the level of performance necessary to indicate college readiness, as defined by Section 39.024(a); and the TEC, §39.025(a), which authorizes the commissioner to adopt rules requiring a student participating in the recommended or advanced high school program to be administered each end-of-course assessment instrument listed in Section 39.023(c) and requiring a student participating in the minimum high school program to be administered an end-of-course assessment instrument listed in Section 39.023(c) only for a course in which the student is enrolled and for which an end-of-course assessment instrument is administered. Additionally, the TEC, §39.025(f), authorizes the commissioner to adopt by rule a transition plan to implement the amendments made by Chapter 1312 (S.B. No. 1031), Acts of the 80th Legislature, Regular Session, 2007, replacing general subject as-
The new section implements the Texas Education Code, §39.0241 and §39.025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The Texas Register (37 Tex Reg 4160) will not be republished. The sections establish the TEKS for technology applications courses in elementary, middle school, and high school. The adopted TEKS are effective in 1998 for Kindergarten-Grade 8 and high school technology applications courses, and related implementation language, that will be superseded by 19 TAC §§126.5-126.7, 126.13-126.16, and 126.31-126.50 of this chapter beginning with the 2012-2013 school year.

In April 2011, the SBOE adopted revisions to the technology applications TEKS for Kindergarten-Grade 8 and for 13 high school courses. In July 2011, the SBOE adopted revisions to the technology applications TEKS for six additional high school courses. The revised technology applications TEKS will be implemented in the 2012-2013 school year. These revisions will supersede the original TEKS at the time of implementation. With the implementation of the revised technology applications TEKS in the 2012-2013 school year, the TEKS adopted in 1998 will no longer be needed and may be repealed with an effective date of August 27, 2012. The SBOE approved the repeal for second reading and final adoption at its July 2012 meeting.

The adopted repeal has no new procedural and reporting implications. The adopted repeal has no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year. The earlier effective date will remove from rule Texas essential knowledge and skills that have been superseded, as well as related implementation language, to avoid confusion. The effective date for the repeal is August 27, 2012.

No comments were received regarding the proposed repeal.

SUBCHAPTER A. ELEMENTARY

19 TAC §§126.1 - 126.3

The repeal is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the assessment instruments.

The repeal implements the Texas Education Code, §7.102(c)(4) and §28.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

The Texas Register (37 Tex Reg 4160) will not be republished. The sections establish the TEKS for technology applications courses in elementary, middle school, and high school. The adopted TEKS are effective in 1998 for Kindergarten-Grade 8 and high school technology applications courses, and related implementation language, that will be superseded by 19 TAC §§126.5-126.7, 126.13-126.16, and 126.31-126.50 of this chapter beginning with the 2012-2013 school year.

In April 2011, the SBOE adopted revisions to the technology applications TEKS for Kindergarten-Grade 8 and for 13 high school courses. In July 2011, the SBOE adopted revisions to the technology applications TEKS for six additional high school courses. The revised technology applications TEKS will be implemented in the 2012-2013 school year. These revisions will supersede the original TEKS at the time of implementation. With the implementation of the revised technology applications TEKS in the 2012-2013 school year, the TEKS adopted in 1998 will no longer be needed and may be repealed with an effective date of August 27, 2012. The SBOE approved the repeal for second reading and final adoption at its July 2012 meeting.

The adopted repeal has no new procedural and reporting implications. The adopted repeal has no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year. The earlier effective date will remove from rule Texas essential knowledge and skills that have been superseded, as well as related implementation language, to avoid confusion. The effective date for the repeal is August 27, 2012.

No comments were received regarding the proposed repeal.

SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §126.11, §126.12

The repeal is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements, and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the assessment instruments.

The repeal implements the Texas Education Code, §7.102(c)(4) and §28.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2012.

TRD-201204100

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: June 8, 2012
For further information, please call: (512) 475-1497

37 TexReg 6308  August 17, 2012  Texas Register
SUBCHAPTER C. HIGH SCHOOL

19 TAC §§126.21 - 126.29
The repeal is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER B. STUDENT ATTENDANCE ACCOUNTING

19 TAC §129.21
The State Board of Education (SBOE) adopts an amendment to §129.21, concerning student attendance accounting. The amendment is adopted with changes to the proposed text as published in the June 8, 2012, issue of the Texas Register (37 TexReg 4162). The section provides requirements for student attendance accounting for state funding purposes. The adopted amendment amends the rule to make it more logically organized, to delete obsolete provisions, and to update provisions describing conditions under which a student who is not on campus at attendance time may be considered in attendance. The adopted amendment also removes language that duplicates statutory language and replaces it with a reference to the applicable statute.

Section 129.21 provides the student attendance accounting requirements school districts must follow and describes the manner in which student attendance is earned. The rule also provides a list of conditions under which a student who is not actually on campus at the time attendance is taken may be considered in attendance for Foundation School Program (FSP) funding purposes. The adopted amendment modified §129.21, as follows.

Subsection (b) was revised to specify that the commissioner is responsible for providing both guidelines and procedures for attendance accounting.

A new subsection (c) was added, using language from former subsection (f). The language was moved to place the provisions related to commissioner responsibilities at the beginning of the rule.

Former subsection (c), which requires the commissioner to provide records for school districts to prepare their daily attendance registers, was deleted, as this provision was obsolete. The agency no longer provides official daily attendance register templates.

A new subsection (d) was added, incorporating language from former subsection (m). The language was moved to place the provisions related to local school district responsibilities immediately after those related to commissioner responsibilities. The new subsection clarifies that attendance records may be stored at any secure location.

Former subsection (d) was relettered as subsection (e). A provision in the subsection requiring adoption of a local policy before students may be counted in attendance was deleted and added as new subsection (l) to place the provision immediately after the subsections to which it applies.

Former subsection (e) was relettered as subsection (f).

Former subsection (f) was deleted, as its language appears as new subsection (c).

Former subsection (g), requiring a central attendance accounting system to be used when classroom instruction is organized on a departmental basis, was deleted, as it was obsolete.

Former subsection (h) was relettered as subsection (g).

Former subsection (i) was relettered as subsection (h). The obsolete provision specifying that a school district may choose an alternate attendance-taking time if permission is obtained from the Texas Education Agency was deleted, making the decision to adopt an alternate time solely a matter of local control. In response to public comment, subsection (h) was modified at adoption as follows. The term "period of the day" was changed to "instructional hour of the day." Language was added to permit the local school board to delegate its authority under this subsection to the district superintendent.

Former subsection (j) was relettered as subsection (i), and a cross-reference within the subsection was amended to reflect relettering of the rule's subsections.

Former subsection (k) was relettered as subsection (j). Former paragraphs (4)-(11) of the subsection, which listed all the conditions provided for in the Texas Education Code (TEC), §25.087, under which a student who is not on campus at attendance time may be considered in attendance for FSP funding purposes, were replaced with new paragraph (3) broadly referencing circumstances provided for in the TEC, §25.087. A statement from former paragraph (11) that an excused health appointment should be supported with documentation was retained and placed in new paragraph (3). At adoption, former paragraph (3), regarding certain absences of Medicaid-eligible children, was deleted upon advice of agency legal counsel that this provision is not a valid exercise of SBOE authority because it impermissibly requires the solicitation of confidential information.

New subsection (k) was added to state that a student not actually on campus at the time attendance is taken also may be considered in attendance for FSP funding purposes under other conditions described in the Student Attendance Accounting Handbook related to off-campus instruction.
A new subsection (l) was added, using language from former subsection (d). In response to public comment, subsection (l) was modified at adoption to add language to permit the local school board or governing body to delegate its authority under this subsection to the district superintendent.

Former subsection (l) was deleted, as the absences it describes have been addressed in new subsection (j)(3).

Subsection (m) was deleted, as its language appears as new subsection (d).

In addition, technical edits were also made throughout the section.

The SBOE approved the proposed amendment to 19 TAC §129.21 for second reading and final adoption at the July 2012 meeting.

The adopted amendment has no new procedural and reporting requirements. The adopted amendment has no new locally maintained paperwork requirements.

The Texas Education Agency has determined that there is no direct adverse economic impact for small businesses and micro-businesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code, §7.102(l), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

Following is a summary of the public comments received and the corresponding responses regarding the proposed amendment to 19 TAC §129.21.

Comment: The Texas Association of School Boards (TASB) commented on the provision that appears in proposed subsection (h) requiring that attendance for all grades be determined in the second or fifth period unless the local school board adopts a policy for recording absences in an alternate period or hour. The TASB stated that the subsection should be amended to authorize the superintendent rather than the board of trustees to grant an alternative period or hour for attendance taking since the superintendent "is statutorily charged to manage day-to-day operations and serve as the district's administrative manager."

Response: The SBOE agreed and took action to add language to permit the local school board to delegate its authority under this subsection to the district superintendent.

Comment: The TASB further commented on the provision that appears in proposed subsection (h) requiring that attendance for all grades be determined in the second or fifth period unless the local school board adopts a policy for recording absences in an alternate period or hour. The TASB stated that the subsection should be revised to use the term "instructional hour of the day" instead of "period of the day" because many campuses do not operate under a class "period" schedule. The TASB also stated that this change would make the wording of the rule consistent with the wording used in the Student Attendance Accounting Handbook, which is adopted by reference under 19 TAC §129.1025.

Response: The SBOE agreed and revised subsection (h) to use the term "instructional hour of the day."

Comment: The TASB commented on the provision that appears in proposed subsection (l) requiring a district or charter school to adopt a policy addressing parental consent for a student to leave campus before the student may be counted in attendance under §129.21 or in attendance when the student was allowed to leave campus during any part of the school day. The TASB stated that, because only a board of trustees may adopt policy, the subsection should be changed to state that the district or charter school must establish procedures instead of adopt a policy.

Response: The SBOE agreed and took action to add language to permit the local school board or governing body to delegate its authority under this subsection to the district superintendent.

The amendment is adopted under the TEC, §42.004, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the Texas Education Code, §42.004.

§129.21. Requirements for Student Attendance Accounting for State Funding Purposes.

(a) All public schools in Texas must maintain records to reflect the average daily attendance (ADA) for the allocation of Foundation School Program (FSP) funds and other funds allocated by the Texas Education Agency (TEA). Superintendents, principals, and teachers are responsible to their school boards and to the state to maintain accurate, current attendance records.

(b) The commissioner of education is responsible for providing guidelines and procedures for attendance accounting in accordance with state law.

(c) The commissioner must provide special circumstances regarding attendance accounting in accordance with the provisions of law.

(d) The superintendent of schools is responsible for the safekeeping of all attendance records and reports. The superintendent of schools may determine whether the properly certified attendance records or reports for the school year are to be stored in the central office, on the respective school campuses of the district, or at another secure location. Regardless of where such records are stored, they must be readily available for audit by the TEA division responsible for performing school financial audits.

(e) Districts must maintain records and make reports concerning student attendance and participation in special programs as required by the commissioner.

(f) If a school district chooses to use a locally developed record or automated system, the record or automated system must contain the minimum information required by the commissioner.

(g) A student must be enrolled for at least two hours of instruction to be considered in membership for one half day, and for at least four hours of instruction to be considered in membership for one full day.

(h) Attendance for all grades must be determined by the absences recorded in the second or fifth instructional hour of the day, unless the local school board adopts a district policy, or delegates to the superintendent the authority to establish procedures, for recording absences in an alternate hour, or unless the students for which attendance is being taken are enrolled in and participating in an alternative attendance accounting program approved by the commissioner.
(1) Students enrolled on a half-day basis may earn only one half day of attendance each school day. Attendance is determined for these pupils by recording absences in a period during the half day that they are scheduled to be present. Students enrolled on a full-day basis may earn one full day of attendance each school day.

(2) Students who are enrolled in and participating in an alternative attendance accounting program approved by the commissioner will earn attendance according to the statutory and rule provisions applicable to that program.

(3) The established period in which absences are recorded may not be changed during the school year.

(4) Students absent at the time the attendance roll is taken, during the daily period selected, are counted absent for the entire day, unless the students are enrolled in and participating in an alternative attendance accounting program approved by the commissioner. Students present at the time the attendance roll is taken, during the daily period selected, are counted present for the entire day, unless the students are enrolled in and participating in an alternative attendance accounting program approved by the commissioner.

(i) A student who is not actually in school at the time attendance is taken must not be counted in attendance for FSP funding purposes, unless the student is participating in an activity that meets the conditions set out in subsection (j) of this section, or unless the student is enrolled in and participating in an alternative attendance accounting program approved by the commissioner.

(j) A student not actually on campus at the time attendance is taken may be considered in attendance for FSP funding purposes under the following conditions.

(1) The student is participating in an activity that is approved by the local board of school trustees and is under the direction of a member of the professional staff of the school district, or an adjunct staff member who:

(A) has a minimum of a bachelor's degree; and

(B) is eligible for participation in the Teacher Retirement System of Texas.

(2) The student is participating in a mentorship approved by district personnel to serve as one or more of the advanced measures needed to complete the Distinguished Achievement Program outlined in Chapter 74 of this title (relating to Curriculum Requirements).

(3) The student is absent for one of the purposes specified in the Texas Education Code (TEC), §25.087(b), (b-2), or (c). Excused days for travel under the TEC, §25.087(b)(1), are limited to not more than one day for travel to and one day for travel from the applicable site. A temporary absence excused under the TEC, §25.087(b)(2), must be supported by a document such as a note from the health care professional.

(k) A student not actually on campus at the time attendance is taken also may be considered in attendance for FSP funding purposes under other conditions described in the handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook) related to off-campus instruction.

(l) Before a district or charter school may count a student in attendance under this section or in attendance when the student was allowed to leave campus during any part of the school day, the local school board or governing body must adopt a policy, or delegate to the superintendent the authority to establish procedures, addressing parental consent for a student to leave campus, and the district or charter school must distribute the policy or procedures to staff and to all parents of students in the district or charter school.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2012.
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Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS
CHAPTER 575. PRACTICE AND PROCEDURE
22 TAC §575.25

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.25, concerning the Recommended Schedule of Sanctions, without changes to the proposed text as published in the June 15, 2012, issue of the Texas Register (37 TexReg 4337) and will not be republished.

The adopted amendments to §575.25 are intended to make the schedule of disciplinary sanctions apply to all licensees, veterinarians and equine dental providers alike. These amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, §801.151(c), which states that the Board shall adopt rules to protect the public, and §801.452, which states that the Board by rule shall develop a standardized penalty schedule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201204132
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Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

22 TAC §575.28
The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §575.28, concerning Complaints--Investigations, with non-substantive changes to the proposed text as published in the June 15, 2012, issue of the Texas Register (37 TexReg 4339). The text of the rule will be republished.

The Board adopts amendments to §575.28 to clarify the Board's procedure for investigating complaints by specifying the information the Board sends to respondent licensees during the course of an investigation in light of confusion among licensees and members of the public regarding the scope and meaning of the word "complaint."

The Board has traditionally interpreted "complaint" in §575.28(6) to refer only to the written narrative allegations submitted by a complainant on the Board's complaint form. The Board does not disclose to the respondent licensee any other documents submitted by the complainant at the earliest stages of the investigation process, before the respondent licensee has sent the Board his records and explained his response to the allegations against him. To preserve this process, and with it the integrity of the Board's investigations, the adopted amendment provides that the Board will send a summary of the allegations in the complaint to the respondent licensee initially with a request for a response. Under the adopted amendment, the respondent licensee has the right to request to review the entire complaint--meaning all documents or materials provided to the Board by a complainant and upon which the Board initiates a request for a response from the licensee unless board staff determines that allowing the respondent licensee to review the complaint in its entirety would jeopardize an active investigation, as could be the case with certain documents such as investigative files from other state and federal agencies, second opinions from other licensees or specialists, and copies of patient records attached to or included with the complaint form. Accordingly, under the adopted amendment when the complainant responds to the respondent licensee's response, board staff will have the discretion to withhold from the respondent any materials submitted by the complainant that could jeopardize the investigation. These changes are intended to preserve the Board's ability to learn the respondent licensee's version of events without suggestion or influence from outside sources; this ability is a vital tool for board investigators seeking the truth.

The Board also adopts amendments to §575.28 that allow any member of Board staff to investigate a complaint, where previously only board investigators could investigate. The Board intends the amendment to give the Director of Enforcement more latitude in assigning investigation duties by allowing her to assign complaint investigations to administrative staff, as well as to investigators on staff, depending on the complexity of the case.

The Board has also adopted an amendment to §575.28 to close an inefficient redundancy in the investigation process, which required the executive director to review all complaints that do not involve medical judgment twice--once in an initial solitary review, and again as part of the staff committee. The rule, as amended, allows the director of enforcement to refer a report of investigation for a probable violation that does not involve medical judgment directly to the staff committee. As a member of the staff committee--which is composed of the executive director, the director of enforcement, the investigating staff member and the general counsel--the executive director will still review the case and take part in deciding whether the case should go forward.

While reviewing the proposed text, the Board noted that the first sentence of paragraph (9)(A) was inadvertently missing a verb, and the Board therefore adopted the amendment with the word "determines" added to the sentence. The Board also noted that paragraph (8) had two redundant phrases together, "interview by telephone contact," and the Board therefore adopted the amendment without the word "contact," with no change to the meaning of the phrase. These are non-substantive changes from the published proposed amendment. The adopted amendment to §575.28 also includes minor corrections to capitalization.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter, §801.151(c), which states that the Board shall adopt rules to protect the public, and §801.205, which states that the Board shall adopt rules relating to the investigation of complaints filed with the Board.

§575.28. Complaints--Investigations.
Investigation of complaints.

(1) Policy. The policy of the Board is that the investigation of complaints shall be the primary concern of the Board's enforcement program, and shall take precedence over all other elements of the enforcement program, including compliance inspections.

(2) Priority. The Board shall investigate complaints based on the following allegations, in order of priority:

(A) acts or omissions, including those related to substance abuse, that may constitute a continuing and imminent threat to the public welfare;

(B) acts or omissions of a licensee that resulted in the death of an animal;

(C) acts or omissions of a licensee that contributed to or did not correct the illness, injury or suffering of an animal; and

(D) all other acts and omissions that do not fall within subparagraphs (A) - (C) of this paragraph.

(3) Upon receipt of a complaint, a letter of acknowledgment will be promptly mailed to the complainant.

(4) Complaints will be reviewed every thirty (30) days to determine the status of the complaint. Parties to a complaint will be informed on the status of a complaint at approximately 45 day intervals.

(5) Upon receipt of a complaint, the director of enforcement, or their designee, will review it and may interview the complainant to obtain additional information. If the director of enforcement concludes that the complaint resulted from a misunderstanding, is outside the jurisdiction of the Board, or is without merit, the director of enforcement shall recommend through the general counsel to the executive director that an investigation not be initiated. If the executive director concurs with the recommendation, the complainant will be so notified. If the executive director does not concur with the recommendations, an investigation will be initiated.

(6) The director of enforcement will assign a member of board staff to investigate the complaint. A summary of the allegations in the complaint will be sent to the licensee who is the subject of the complaint, along with a request that the licensee respond in writing within 21 days of receipt of the request. The licensee will also be asked to provide a copy of the relevant patient records with the response. The licensee is entitled on request to review the complaint submitted to the Board unless board staff determines that allowing the licensee to review the complaint would jeopardize an active investigation.
(7) After the licensee's response to the complaint is received, board staff shall send a copy of the licensee's response to the complainant, along with notification that the complainant may submit additional comments and other evidence, if any, at any time during the investigation to the Board. Board staff shall provide any response provided by the complainant to the licensee, unless board staff determines that allowing the licensee to review the response from the complainant would jeopardize an active investigation, and provide a single opportunity for the licensee to respond to the Board within ten days of receipt. No further responses from either the licensee or the complainant will be provided to either party.

(8) Further investigation may be necessary to corroborate the information provided by the complainant and the licensee. During the investigation, board staff shall attempt to interview by telephone the complainant, and if unable to contact the complainant shall document such in the file. Other persons, such as second opinion or consulting veterinarians, may be contacted. Board staff may request additional medical opinions, supporting documents, and interviews with other witnesses.

(9) Upon the completion of an investigation, board staff shall prepare a report of investigation (ROI) for review by the director of enforcement.

(A) If the director of enforcement determines from the ROI that the probability of a violation involving medical judgment or practice exists, the director of enforcement will forward the ROI to the executive director. If the executive director concurs that the probability of a violation involving medical judgment or practice exists, the director of enforcement shall forward a copy of the ROI and complaint file to the board secretary and another board member (the "veterinarian members") who will determine whether or not the complaint should be closed, further investigation is warranted, or if the licensee and complainant should be invited to respond to the complaint at an informal conference at the board offices.

(B) If the director of enforcement determines from the ROI that the probable violation does not involve medical judgment or practice (example: administrative matters such as continuing education and federal and state controlled substances certificates), the director of enforcement shall forward the complaint file to a committee of the executive director, director of enforcement, member of board staff assigned to investigate the complaint, and general counsel (the "staff committee"), which shall determine whether or not the complaint should be dismissed, investigated further, or settled.

(C) If the veterinarian members determine that a violation has not occurred, the executive director or the executive director's designee, shall notify the complainant and licensee in writing of the conclusion and that the complaint is dismissed.

(D) If the veterinarian members conclude that a probable violation(s) exists, the executive director or the executive director's designee, shall invite the licensee and complainant, in writing, to an informal conference to discuss the complaint made against the licensee. If the veterinarian members cannot agree to dismiss or refer the complaint to an informal conference, the complaint will be automatically referred to an informal conference. The letter invitation to the licensee must include a list of the specific allegations of the complaint.

(E) A complaint considered by the staff committee shall be referred to an informal conference if:

(i) the staff committee determines that the complaint should not be dismissed or settled;

(ii) the staff committee is unable to reach an agreed settlement; or

(iii) the licensee who is the subject of the complaint requests that the complaint be referred to an informal conference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.16
The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §577.16, concerning Responsibilities of Board and Staff, without change to the proposed text as published in the June 15, 2012, issue of the Texas Register (37 TexReg 4341) and will not be republished.

The Board adopts the amendment to §577.16 to include equine dentistry along with veterinary medicine as professions that the Board is responsible for regulating under the Veterinary Licensing Act. The amendment is necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers.

No comments were received regarding adoption of the rule.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2012.
TRD-201204134
Loris Jones
Executive Director
Texas Board of Veterinary Medical Examiners
Effective date: August 26, 2012
Proposal publication date: June 15, 2012
For further information, please call: (512) 305-7563

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION
The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.305, concerning Procedures for Testing Conducted by On-Site and Distance Training Providers. The amendments are adopted without changes to the proposed text as published in the May 25, 2012, issue of the Texas Register (37 TexReg 3785) and will not be republished.

The amendments are adopted to clearly define how a final test will be conducted and also define who can be a proctor. It also specifies how an examination is to be conducted if a course is taught in phases.

The adopted amendments will ensure that a commission approved proctor will be conducting the comprehensive final exam. It will also let examinees know they must pass a comprehensive exam after each phase if it is taught in phases and they must achieve a passing score of 70 percent.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, General Powers and Duties, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, Appointment of Fire Protection Personnel, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, General Powers and Duties, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, General Powers and Duties, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.022, which provides the commission the authority to establish minimum education, training, physical and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.
mission the authority to adopt rules for the administration of its powers and duties; §419.026, which provides the commission the authority to set and collect fees for examinations and certificates.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.

TRD-201204007
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: October 1, 2012
Proposal publication date: May 25, 2012
For further information, please call: (512) 936-3813

CHAPTER 439. EXAMINATIONS FOR CERTIFICATION
SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING
37 TAC §439.1, §439.11

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations for Certification, Subchapter A, Examinations for On-Site Delivery Training, §439.1, concerning Requirements—General; and §439.11, concerning Commission-Designated Performance Skill Evaluations. The amendments are adopted without changes to the proposed text as published in the May 25, 2012, issue of the Texas Register (37 TexReg 3787) and will not be republished.

The adopted amendments define the total number of sections a Wildland Fire Protection certification examination will consist of with the adoption of new Chapter 455 by the commission. It also ensures that testing participants are provided proper NFPA compliant personal protective gear and SCBA when an IDLH environment exists during skills testing.

The adopted amendments will provide clear and concise rules regarding the testing process as well as ensure safety for all students who are performing skills testing.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the commission the authority to establish minimum education, training, physical, and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.
(a) A wildland fire fighter is defined as an individual whose assigned function is suppression of fires in the wildland or wildland-urban interface setting.

(b) Individuals holding Wildland Fire Protection certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) All Wildland Fire Protection certifications issued by the commission and referenced in this chapter are voluntary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.
TRD-201204009
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: August 20, 2012
Proposal publication date: May 25, 2012
For further information, please call: (512) 936-3813

CHAPTER 457. MINIMUM STANDARDS FOR INCIDENT SAFETY OFFICER CERTIFICATION

37 TAC §§457.1, 457.3, 457.5

The Texas Commission on Fire Protection (the commission) adopts new Chapter 457, Minimum Standards for Incident Safety Officer, §457.1, concerning Incident Safety Officer Certification; §457.3, concerning Minimum Standards for Incident Safety Officer Certification; and §457.5, concerning Examination Requirements. New §457.1 is adopted with changes to the proposed text as published in the May 25, 2012, issue of the Texas Register (37 TexReg 3789). New §§457.3 and 457.5 are adopted without changes and will not be republished.

The new sections are adopted to provide a clear and concise set of rules defining what an Incident Safety Officer is and outlining state requirements for obtaining the certification.

The adopted new sections will provide another certification for individuals who seek higher levels of certification for professional development, even though it is a voluntary certification.

The commission received one comment on the proposed new sections during the 30-day public comment period. Following is the public comment and commission response.

Public Comment: The commenter stated that a Firefighter Intermediate certification through the commission should be required in order to obtain the Incident Safety Officer certification thus ensuring at least four years of experience which would be more valuable to the Incident Safety Officer position than the requirement of Fire Officer I.

Commission Response: The commission disagreed with the commenter and reiterated that the Incident Safety Officer Certification is a voluntary certification.

The new sections are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; §419.022, which provides the commission the authority to establish minimum education, training, physical, and mental standards for admission to employment as fire protection personnel; and §419.032, which provides the commission the authority to adopt rules to establish qualifications for fire protection personnel.

§457.1. Incident Safety Officer Certification.

(a) An Incident Safety Officer is defined as a member of the command staff responsible for monitoring and assessing safety hazards or unsafe situations and for developing measures for ensuring personnel safety at an incident.

(b) All individuals holding an Incident Safety Officer certification shall be required to comply with the continuing education requirements in Chapter 441 of this title (relating to Continuing Education).

(c) All Safety Officer certifications issued by the commission and referenced in this chapter are voluntary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2012.
TRD-201204010
Don Wilson
Executive Director
Texas Commission on Fire Protection
Effective date: August 20, 2012
Proposal publication date: May 25, 2012
For further information, please call: (512) 936-3813

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§705.1001, 705.2915, 705.2916, 705.2940, and 705.4101; new §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011, 705.2101, 705.2103, 705.2105, 705.2107, 705.4101, 705.4103, 705.4105, 705.4107, 705.4109, and 705.4111; and amendments to §§705.3101, 705.3102, 705.6101, and 705.8101 in its Adult Protective Services (APS) chapter. New §§705.1001, 705.1005, 705.1007, 705.1011, 705.4101, and 705.4103 are adopted with changes to the proposed text published in the May 18, 2012, issue of the Texas Register (37 TexReg 3689) The repeal of §§705.1001, 705.2915, 705.2916, 705.2940, and 705.4101; new §§705.1003, 705.1009, 705.2101, 705.2103, 705.2105, 705.2107, 705.4105, 705.4107, 705.4109, and 705.4111; and amendments to §§705.3101, 705.3102, 705.6101, and 705.8101 are adopted without changes to the proposed text and will not be republished.

The justification for the changes is to establish in rule the statutory definitions of abuse, neglect and exploitation (ANE) in the APS in-home program. The current ANE definitions for this program, by and large, reflect the statutory language. Senate Bill
First, due to increasing intakes and decreasing staff, DFPS desires to target who it serves more effectively. APS plays the de facto role of the safety net for certain aspects of the Texas health and human services delivery system. Through rule change, DFPS hopes to clarify and refine its role by targeting investigations and services to APS clients who agree to these services and by not using scarce resources on clients better served by others. DFPS is adopting three types of changes: (1) eliminate cases when the APS investigation will not alleviate the root cause of the ANE; (2) eliminate duplication of cases in which other entities have clearer responsibility and resources; and (3) streamline cases in which an expedited investigation would be more efficient.

The second reason DFPS requested this authority is a need to make changes to definitions for paid caretakers, particularly employees of home and community support services agencies (HCSSAs). The current APS in-home ANE definitions apply in situations in which a caretaker is paid or non-paid. DFPS believes a distinction is needed between paid and non-paid caretakers based on the premise that paid caretakers have a higher duty or responsibility than non-paid caretakers, which should be reflected in the definitions. In addition to these changes, DFPS is also clarifying and updating the language of the other rules in this chapter. A summary of the changes follows:

Section 705.1001 is repealed and adopted as new. The new section: (1) adds definitions for APS, DFPS, emotional harm, intimidation, ongoing relationship, paid caretaker, person with a disability, physical injury, serious harm, substantially impairs, and unreasonable confinement; (2) deletes definitions of abuse, aged or disabled person, authorized representative, CAPS, collateral contact, community care, emotional or verbal abuse, exploitation, family violence, institution, least restrictive alternative, neglect, personal care facility, primary worker, principal, secondary worker, and sexual abuse; and (3) updates the definitions of some of the remaining terms that were contained in the repealed rule.

New §705.2105 adds who is eligible for emergency client services as previously contained in §705.2940.

New §705.2107 states when emergency client services are available as previously contained in §705.2940.

The amendment to §705.3101 clarifies the role of APS when a person is a victim of domestic violence and updates a reference to the Texas Family Code.

The amendment to §705.3102 updates the language of the rule and a reference to the Texas Family Code.

Section 705.4101 is repealed and adopted as new. For clarity and to update the rule language, the previous information contained in the repealed rule has been revamped into four new rules (§§ 705.4101, 705.4103, 705.4105 and 705.4107). This specific new rule relates to the terms defined in this subchapter.

New §705.4103: (1) clarifies the rights of the designated perpetrator to appeal APS findings; and (2) clarifies what due process hearings are available to a designated perpetrator.

New §705.4105 clarifies the responsibility of DFPS to notify the designated perpetrator when intending to release investigation findings.

New §705.4107 addresses the role of the designated perpetrator during the administrative review process.

New §705.4109 clarifies that administrative reviews (release hearings) are closed to the public.

New §705.4111 clarifies who receives notification of the final decision.

The amendment to §705.6101 adds the word "financial" before all references to "exploitation."

The amendment to §705.8101 updates the language of the rule to be consistent with other changes being made in this chapter.

In addition, throughout the rules, the terms "elderly person" and "disabled person" are replaced with person first language; the term "aged and disabled adults" is replaced with "alleged victims;" the term "elderly person or an adult with a disability" is replaced with "alleged victim;" the agency name is changed to Department of Family and Protective Services; and the word "financial" is added before the term "exploitation" to clarify that exploitation refers to financial exploitation.

The sections will function by ensuring that APS focuses on targeting services to the most vulnerable adults that it can most effectively serve.

Prior to publication of the proposed rules, initial drafts of the proposed rules were presented to stakeholders in a meeting held on October 10, 2011. Stakeholders were contacted via email and provided the opportunity to participate in the meeting or to submit comments prior to the meeting. The stakeholders who participated in the meeting were later sent a subsequent version of the proposed rule change regarding the amended definition of sexual abuse, which was the only area of substantive disagreement at the meeting. Additional outreach through participation in a conference call and written material was made to mental health authorities, and a presentation was made to area agency on aging staff. APS also met individually with representatives from various stakeholder groups. The rules were presented to the DFPS Council at their meeting on April 20, 2012. At the meeting, public testimony was received from several stakeholder rep-
representatives. During the public comment period, DFPS received comments from the Texas Association for Home Care & Hospice. A summary of the comments and DFPS’s response follows:

Comments concerning §705.1009(b)(2):

The commenter did not agree with adding the concept of "negligence" to the definition of "neglect by a paid caretaker." The commenter felt the language exceeded DFPS's statutory authority. The commenter also felt this additional language might result in professionals (e.g., nurses or doctors) being investigated for clinical practice issues (e.g., giving the wrong medication).

Response: DFPS is adopting this section without change. Newly passed (2011) §48.001(c) of the Human Resources Code gave DFPS the authority to adopt rules which would define ANE for in-home investigations. The rule establishes a standard of conduct that is appropriate and necessary for paid caretakers as this term is defined in §705.1001(18). However, DFPS has clarified that the "paid caretaker" definition at §705.1001(18) only applies to "personal care" services as defined in §142.001(22-a) of the Health and Safety Code. Since many professionals do not provide personal care services, this should alleviate some of the concern. In addition, APS is developing policy regarding how to handle clinical issues for an in-home setting which will result in some clinical issues being referred to the relevant licensing board.

Comments concerning §705.1011:

(1) One commenter expressed concern that "informed consent" was not included in the paid caretaker definition of exploitation.

Response: DFPS agrees with the commenter and is amending this rule in a manner that sets identical standards, including informed consent, for financial exploitation for both paid caretakers and unpaid caretakers with the exception of including theft as exploitation only for paid caretakers. DFPS is also replacing "person" with "alleged victim" throughout the definition.

(2) A commenter indicated concern that the reference to Fraud in Chapter 32 of the Penal Code does not have the intended effect as the proposed rule fails to clarify that certain acts by an HCSSA employee constitute Medicare/Medicaid fraud but not financial exploitation.

Response: DFPS agrees including the Fraud language on Chapter 32 of the Penal Code confuses the issue and is deleting this language. However, certain fraud will from time to time be classified as exploitation for paid and unpaid caretakers. DFPS is not adding a reference to Medicare/Medicaid fraud in rule. Adult Protective Services policy currently clarifies that Medicare/Medicaid fraud is not financial exploitation as defined in §705.1011.

In addition to changes in response to comment, (1) DFPS is deleting the definitions of "authorized representative," "community care," and "institution" from §705.1001; (2) In §705.1001, in paragraph (17), DFPS is deleting subparagraph (D) of the definition of "ongoing relationship" because this requirement of "an awareness of the circumstances in which the alleged victim is living" is primarily already required in the definition of caretaker when a person must accept responsibility for an alleged victim, and paid caretaker when a person is hired to provide personal care services. DFPS is also adding clarifying language to subparagraph (C), which was inadvertently left out of the definition. It now reads "an establishment of trust, beyond a commercial or contractual agreement;" (3) In §705.1001(18), DFPS is adding language to "paid caretaker." The new definition is an employee of an HCSSA licensed under Chapter 142, Health and Safety Code, to provide personal care services to an alleged victim, or an individual or family member privately hired and receiving monetary compensation to provide personal care services to an alleged victim. "Personal care" is defined in §142.001(22-a) of the Health and Safety Code; (4) DFPS is adding the word "the" before "alleged victim" in §705.1005(b)(5) for clarity; (5) In §705.1007, DFPS is adding the word "reasonable" to modify "person" because the intellectual disabilities of some APS clients make some of the fears unreasonable; (6) In §705.4101 DFPS is making it clear that an emergency release is when any "adult with a disability or aged 65 or older" is in a state of or at risk of serious harm, not just "an alleged or designated victim"; and (7) In §705.4103, DFPS is including the term "home and community support services agency" in lieu of "home health agency."

SUBCHAPTER A. DEFINITIONS

40 TAC §705.1001

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Senate Bill 221, 82nd Legislature, Regular Session, 2011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on August 6, 2012.

TRD-201204116

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2012

Proposal publication date: May 18, 2012

For further information, please call: (512) 438-3437

40 TAC §§705.1001, 705.1003, 705.1005, 705.1007, 705.1009, 705.1011

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Senate Bill 221, 82nd Legislature, Regular Session, 2011.

§705.1001. How are the terms in this chapter defined?
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

1. Adult--A person aged 18 or older, or an emancipated minor.
2. Allegation--An assertion that an alleged victim is in a state of or at risk of harm due to abuse, neglect, or financial exploitation.
3. Alleged perpetrator--A person who is reported to be responsible for the abuse, neglect, or financial exploitation of an alleged victim.
4. Alleged victim--An adult with a disability or aged 65 or older who has been reported to adult protective services to be in a state of or at risk of harm due to abuse, neglect, or financial exploitation.
5. Alleged victim/perpetrator--An adult with a disability or aged 65 or older who has been reported to adult protective services to be in a state of or at risk of self-neglect.
6. APS--Adult Protective Services, a division of DFPS.
7. Capacity to consent to protective services--Having the mental and physical ability to understand the services offered and to accept or reject those services knowing the consequences of the decision.
8. Caretaker--A guardian, representative payee, or other person who by act, words, or course of conduct has acted so as to cause a reasonable person to conclude that he has accepted the responsibility for protection, food, shelter, or care for an alleged victim. This excludes paid caretakers as defined by this chapter.
9. Client--An alleged victim who has been determined in a validated finding to be in need of protective services. The alleged victim does not have to meet financial eligibility requirements.
10. Designated perpetrator--An alleged perpetrator who has been determined in a validated finding to have abused, neglected, or financially exploited a designated victim.
11. Designated victim--An alleged victim with a valid abuse, neglect, or financial exploitation finding.
13. DFPS--Department of Family and Protective Services.
14. Emancipated minor--A person under 18 years of age who has the power and capacity of an adult. This includes a minor who has had the disabilities of minority removed by a court of law or a minor who, with or without parental consent, has been married. Marriage includes common-law marriage.
15. Emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury.
16. Intimidation--Behavior by actions or words creating fear of physical injury, death, or abandonment.
17. Ongoing relationship--A personal relationship that includes:
   (A) frequent and regular interaction;
   (B) a reasonable assumption that the interaction will continue; and
   (C) an establishment of trust, beyond a commercial or contractual agreement.
18. Paid caretaker--An employee of a home and community support services agency (HCSSA) licensed under Chapter 142, Health and Safety Code, to provide personal care services to an alleged victim, or an individual or family member privately hired and receiving monetary compensation to provide personal care services to an alleged victim. "Personal care" is defined in §142.001(22-a) of the Health and Safety Code.
19. Person with a disability--An adult with a physical, mental, or developmental disability that substantially impairs the adult's ability to adequately provide for his own care or protection.
20. Physical injury--Physical pain, harm, illness, or any impairment of physical condition.
21. Protective services--The services furnished by DFPS or by a protective services agency to a designated victim (including a designated victim/perpetrator) or to the designated victim's relative or caretaker if DFPS determines the services are necessary to prevent the designated victim from returning to a state of abuse, neglect, or financial exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with Human Resources Code, Chapter 48. The term does not include the services of DFPS or another protective services agency in conducting an investigation regarding an allegation of abuse, neglect, or financial exploitation. (Human Resources Code, §48.002)
22. Provider agency or entity (contractor)--An agency or entity that has contracted with DFPS to provide authorized protective services to clients.
23. Reporter--A person who makes a referral to DFPS about a situation of alleged abuse, neglect, or financial exploitation of an alleged victim.
24. Serious harm--In danger of sustaining significant physical injury or death; or danger of imminent impoverishment or deprivation of basic needs.
25. Substantially impairs--When a disability grossly and chronically diminishes an adult's physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment.
26. Sustained perpetrator--A designated perpetrator whose validated finding of abuse, neglect, or financial exploitation of a designated victim has been sustained by an administrative law judge in a due process hearing, including a release hearing or Employee Misconduct Registry (EMR) hearing, or the designated perpetrator has waived the right to a hearing.
27. Unreasonable confinement--An act that results in a forced isolation from the people one would normally associate with, including friends, family, neighbors, and professionals; an inappropriate restriction of movement; or the use of any inappropriate restraint.

§705.1005. How is sexual abuse defined?

(a) In this chapter, when an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, sexual abuse is defined as nonconsensual sexual activity, which may include, but is not limited to, any activity that would be a sexually-oriented offense per Texas Penal Code, Chapters 21, 22, or 43.

(b) There is no consent when:
(1) the alleged perpetrator knows or should know that the alleged victim is incapable of consenting because of impairment in judgment due to mental or emotional disease or defect;
(2) consent is induced by force or threat against any person;
(3) the alleged victim is unconscious or physically unable to resist;
(4) the alleged perpetrator has intentionally impaired the alleged victim by administering any substance without the person's knowledge; or
(5) consent is coerced due to fear of retribution or hardship, or by exploiting the emotional dependency of the alleged victim on the alleged perpetrator.

§705.1007. How is emotional or verbal abuse defined?
(a) In this chapter, when an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, emotional or verbal abuse is defined as any act or use of verbal or other communication to threaten violence that makes a reasonable person fearful of imminent physical injury.
(b) In this chapter, when an alleged perpetrator is a paid caretaker, emotional or verbal abuse is defined as any act or communication that is:
(1) used to curse, vilify, humiliate, degrade, or threaten and that results in emotional harm; or
(2) of such a serious nature that a reasonable person would consider it emotionally harmful.

§705.1011. How is financial exploitation defined?
(a) In this chapter, when an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation is defined as the illegal or improper act or process of an alleged perpetrator using, or attempting to use, the resources of the alleged victim, including the alleged victim's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the alleged victim. There is no informed consent when it is:
(1) not voluntary;
(2) induced by deception or coercion; or
(3) given by an alleged victim who the actor knows or should have known to be unable to make informed and rational decisions because of diminished capacity or mental disease or defect.
(b) In this chapter, when an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation excludes Theft in Chapter 31 of the Texas Penal Code.
(c) In this chapter, when an alleged perpetrator is a paid caretaker, financial exploitation includes, but is not limited to, Theft in Chapter 31 of the Texas Penal Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.
SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §§705.3101, 705.3102

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services, and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §40.021.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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SUBCHAPTER J. RELEASE HEARINGS

40 TAC §705.4101

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services, and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.021.

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SUBCHAPTER L. RISK ASSESSMENT
40 TAC §705.6101

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §48.004 and HRC §40.021.
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SUBCHAPTER N. PUBLIC AWARENESS
40 TAC §705.8101

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §40.0527.
The amendments to §§711.405, 711.611, 711.613, and 711.1013 replace ICF-MR with ICF-ID, update several rule references, and replace HCSW with HCS.

New §711.1015 clarifies the right of DFPS to conduct a review of an investigation without a request for a review of finding or methodology and the responsibility to notify all involved parties of any change in the finding.

The amendments to §711.1201 and §711.1203 update the name of Advocacy, Inc. to Disability Rights Texas.

The amendment to §711.1207: (1) clarifies that APS may review the "methodology used" during a requested appeal of findings; and (2) removes the requirement that APS notify the "victim, or alleged victim, guardian or parent (if victim is a child)," which is the provider's responsibility.

New §711.1209 clarifies the right of DFPS to conduct a review of an investigation without an appeal request and the responsibility to notify all involved parties of any change in the finding.

The amendment to §711.1402: (1) defines "facility investigation" and clarifies the entities under the investigatory responsibility of DFPS; (2) revises the HCS definition to incorporate use of people first (respectful) language; (3) changes HCSW to HCS; (4) changes ICF-MR to the current term ICF-ID; (5) references Chapter 705 for the new abuse, neglect and exploitation (ANE) rule definitions; (6) deletes language that inaccurately portrays in-home investigations as limited to those involving HCSSA providers; and (7) replaces "mental retardation" with "intellectual disabilities."

Section 711.1404 is repealed and adopted as new. The new section clarifies which physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation in-home definitions that are adopted in Chapter 705 of this title apply to the Employee Misconduct Registry (EMR).

The amendment to §711.1406 clarifies that consensual sexual activity in an ongoing relationship begun prior to the provision of services is not sexual abuse and removes MHMR in reference to facility investigations.

The amendment to §711.1408 removes MHMR in reference to facility investigations.

The amendment to §711.1413 makes the rule consistent with other rules on emergency releases.

The amendment to §711.1421 clarifies that EMR hearings may be postponed until the criminal case resolves and updates the name of hearings examiner to administrative law judge.

The amendment to §711.1426 makes a grammatical correction.

The amendment to §711.1427 clarifies that EMR hearings are confidential and closed to the public and updates the name of hearings examiner to administrative law judge.

The amendment to §711.1429 clarifies that EMR decisions will now be final and not a Proposal for Decision in accordance with Human Resources Code, §48.405 as modified by the 82nd Legislature in Senate Bill 221.

The sections will function by providing public access to updated information.

Prior to publication of the proposed rules, initial drafts of the proposed rules were presented to stakeholders in a meeting held on October 10, 2011. Stakeholders were contacted via email and provided the opportunity to participate in the meeting or to submit comments prior to the meeting. The stakeholders who participated in the meeting were later sent a subsequent version of the proposed rule change regarding the amended definition of sexual abuse, which was the only area of substantive disagreement at the meeting. Additional outreach through participation in a conference call and written material was made to mental health authorities, and a presentation was made to area agency on aging staff. APS also met individually with representatives from various stakeholder groups. The rules were presented to the DFPS Council at their meeting on April 20, 2012. At the meeting, public testimony was received from several stakeholder representatives. During the public comment period, DFPS received comments from the Texas Association for Home Care & Hospice. A summary of the comments and DFPS's response follows:

Comments concerning §711.1404:

(1) A commenter did not agree with adding the concept of "negligence" to the definition of "neglect by a paid caretaker." This commenter felt the language exceeded DFPS's statutory authority. In addition, the commenter felt this additional language might result in professionals (e.g., nurses and doctors) being investigated for clinical practice issues (e.g., giving the wrong medication).

Response: DFPS is adopting the neglect definition without change. Newly passed (2011) §48.001(c) of the Human Resources Code gave DFPS the authority to adopt rules which would define ANE for in-home investigations. The rule establishes a standard of conduct that is appropriate and necessary for paid caretakers as this term is defined in §705.1001(18) of this title (relating to How are the terms in this chapter defined?). However, DFPS has clarified that the "paid caretaker" definition at §705.1001(18) of this title only applies to "personal care" services as defined in §142.001(22-a) of the Health and Safety Code. Since many professionals do not provide personal care services, this should alleviate some of the concern. In addition, APS is developing policy regarding how to handle clinical issues for an in-home setting.

(2) A commenter expressed concern as to why "informed consent" was not included in the paid caretaker definition of exploitation. This commenter also indicated concern that the reference to Fraud in Chapter 32 of the Texas Penal Code does not have the intended effect as the proposed rule fails to clarify that certain acts by a home and community support service agency employee constitute Medicare/Medicaid fraud but not financial exploitation.

Response: DFPS agrees with the commenter and is amending §711.1404(5) in a manner that sets identical standards, including informed consent, for financial exploitation for both paid caretakers and unpaid caretakers with the exception of including theft as exploitation only for paid caretakers. DFPS also agrees that including the Fraud language of Chapter 32 of the Texas Penal Code confuses the issue and is deleting this language. However, certain fraud will from time to time be classified as exploitation for paid and unpaid caretakers. DFPS is not adding a reference to Medicare/Medicaid fraud in rule. Adult Protective Services policy currently clarifies that Medicare/Medicaid fraud is not financial exploitation as defined in §711.1404. Finally, DFPS is also replacing "person" with "alleged victim" throughout the definition.

In addition, DFPS is making the following clarifications:
In §711.1, DFPS is updating the name of the home and community-based services waiver program to the home and community-based services program.

In §711.3, DFPS is: (1) adding people-first language to paragraph (11); (2) updating the name of the home and community-based services waiver program to the home and community-based services program in paragraph (20); and (3) correcting capitalization and use of parentheses in paragraph (26).

In §711.13(b) and §711.1406(b), DFPS is simplifying the language because the "for good cause shown" and "ongoing relationship" wording confused the meaning of the rule.

In §711.1402(14), DFPS is: (1) adding a reference to investigations conducted by Adult Protective Services under Chapter 705 of this title; and (2) removing language that inaccurately portrays in-home investigations as limited to those involving HCSSA providers.

SUBCHAPTER A. INTRODUCTION

40 TAC §§711.1, 711.3, 711.13

The amendments adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement House Bill 1481, 82nd Legislature, Regular Session, and HRC §48.251.

§711.1. What is the purpose of this chapter?

The purpose of this chapter is to:

(1) implement the Human Resources Code (HRC) §48.255(a) and (c) and §48.355(c), and Texas Family Code §261.404, which require the Texas Department of Family and Protective Services (DFPS) to develop joint rules with the Texas Department of Aging and Disability Services (DADS) and the Texas Department of State Health Services (DSHS) to facilitate investigations in DADS and DSHS facilities and related programs;

(2) describe Adult Protective Services investigations of allegations involving adults and children in the following programs:

(A) DADS and DSHS facilities;

(B) local authorities;

(C) community centers;

(E) home and community-based services programs;

(F) a contractor or agent of one of the programs listed in subparagraphs (A) - (E) of this paragraph;

(3) define abuse, neglect, and exploitation of a person served by the programs listed in paragraph (2) of this section;

(4) describe procedures for reporting and investigating allegations; and

(5) implement Human Resources Code, Chapter 48, Subchapter I, relating to the Employee Misconduct Registry maintained by DADS, as described in Subchapter O of this chapter (relating to Employee Misconduct Registry).

§711.3. How are the terms in this chapter defined?

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Administrator--The person in charge of a facility, local authority, community center, or home and community-based services waiver program, or designee. The term does not apply to the DADS Assistant Commissioner of State Supported Living Centers (SSLC) or the DSHS Assistant Commissioner for Mental Health Substance Abuse Services.

(2) Adult--An adult is a person:

(A) 18 years of age or older; or

(B) under 18 years of age who:

(i) is or has been married; or

(ii) has had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(3) APS--Adult Protective Services, a division of DFPS.

(4) Agent--An individual (e.g., student, volunteer), not employed by but working under the auspices of a:

(A) facility, local authority, community center, or home and community-based services waiver program; or

(B) contractor of one of the programs listed in subparagraph (A) of this paragraph.

(5) Allegation--A report by an individual that a person served has been or is in a state of abuse, neglect, or exploitation as defined by this subchapter.

(6) Child--A person under 18 years of age who:

(A) is not and has not been married; or

(B) has not had the disabilities of minority removed pursuant to the Texas Family Code, Chapter 31.

(7) Clinical practice--Relates to the demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the Nursing Practice Act, Vocational Nurse Act, Dental Practice Act, Pharmacy Practice Act, or Medical Practice Act.

(8) Community center--A community mental health center, community mental retardation center, or community mental health and mental retardation center, established under the Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(9) Consumer Rights and Services--The section at DADS' state office charged with protecting the rights of persons served.

(10) Consumer Services and Rights Protection--The unit at DSHS' central office charged with protecting the rights of persons served.

(11) Contractor--Any organization, entity, or individual who contracts with a facility, local authority, community center, or HCS to provide services directly to a person with mental health and/or intellectual disabilities. The term includes a local independent school district with which a facility, local authority, or community center has a memorandum of understanding (MOU) for educational services.

(12) Contractor CEO--The person in charge of a contractor that has one or more employees, excluding the CEO.
(13) DADS--Department of Aging and Disability Services.

(14) DFPS--Department of Family and Protective Services.

(15) DSHS--Department of State Health Services.

(16) Emergency order for protective services--A court order for protective services obtained under Human Resources Code, §48.208.

(17) Emergency services in Home and Community-Based Services (HCS)--Services provided by APS in-home staff necessary to immediately protect a person served by an HCS from serious physical harm or death. Examples include, but are not limited to, arranging for:

(A) an emergency order for protective services;

(B) shelter;

(C) medical and psychiatric assessments and/or treatment; and

(D) food, medication, or other supplies.

(18) Emergency Services in Licensed ICFs-ID--Services provided by DADS if DADS determines, based on information from the DFPS investigator, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation. DADS will file a petition for temporary care and protection of a resident.

(19) Facility--A state hospital, state supported living center, or Rio Grande State Center that is operated by DADS or DSHS, and unless the context indicates otherwise licensed ICFs-ID.

(20) Home and community-based services (HCS) programs--The Home and Community-Based Services and the Texas Home Living Medicaid waiver programs authorized under the Social Security Act, §1915(c), operated by DADS under the authority of the Texas Health and Human Services Commission, that are exempt from licensure in accordance with Health and Safety Code, §142.003(a)(19).

(21) HCS CEO/Administrator Designee--The person designated to perform the duties of the CEO/Administrator for the purposes of the investigation when the CEO/Administrator is the alleged perpetrator in an investigation.

(22) ICF-ID--A licensed intermediate care facility for persons with intellectual disabilities, also known as ICF-MR.

(23) Incitement--To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(24) Individual with a disability receiving services--A disabled person as defined in the Human Resources Code, Chapter 48, receiving services from a:

(A) facility, local authority, community center, HCS; or

(B) contractor or agent of one of the programs listed in subparagraph (A) of this paragraph.

(25) Investigator--An employee of the division of Adult Protective Services who has:

(A) demonstrated competence and expertise in conducting investigations; and

(B) received training on techniques for communicating effectively with individuals with a disability.

(26) Licensed ICF-ID CEO/Administrator Designee--The person designated to perform the duties of the CEO/Administrator for the purposes of the investigation when the CEO/Administrator is the alleged perpetrator in an investigation.

(27) Local authority--An entity designated by the HHSC Executive Commissioner in accordance with the Health and Safety Code, §533.035(a).

(28) Mental health services provider--In accordance with the Texas Civil Practice and Remedies Code, §81.001, an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by §505.002, Occupations Code;

(B) chemical dependency counselor as defined by §504.001, Occupations Code;

(C) licensed professional counselor as defined by §503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by §502.002, Occupations Code;

(E) member of the clergy;

(F) physician who is practicing medicine as defined by §151.002, Occupations Code;

(G) psychologist offering psychological services as defined by §501.003, Occupations Code; or

(H) special officer for mental health assignment certified under §1701.404, Occupations Code.

(29) Non-serious physical injury (in Community Centers, Local Authorities, licensed ICFs-ID and HCS Programs)--Any injury determined not to be serious by the appropriate medical personnel. Examples of non-serious physical injury include the following:

(A) superficial laceration;

(B) contusion two and one-half inches in diameter or smaller; or

(C) abrasion.

(30) Non-serious physical injury (in DADS and DSHS facilities only)--Any injury requiring minor first aid and determined not to be serious by a registered nurse, advanced practice nurse (APN), or physician.

(31) Peer review--A review of clinical and/or:

(A) medical practice(s) by peer physicians;

(B) dental practice(s) by peer dentists;

(C) pharmacy practice(s) by peer pharmacists; or

(D) nursing practice(s) by peer nurses.

(32) Perpetrator--An employee, agent, or contractor of a facility, local authority, community center, or HCS who has committed an act of abuse, neglect, or exploitation.

(33) Person served--An individual with a disability receiving services, or a child receiving services in a:

(A) facility or HCS who is registered or assigned in the Client Assignment and Registration (CARE) system; or

(B) community center or local authority who is registered or assigned in CARE or who is otherwise receiving services from a community center or local authority, either directly or by contract.

(34) Preponderance of evidence--The greater weight of evidence, or evidence which is more credible and convincing to the mind.
(35) Prevention and management of aggressive behavior (PMAB)--DADS and DSHS' proprietary risk management program that uses the least intrusive, most effective options to reduce the risk of injury for persons served and staff from acts or potential acts of aggression.

(36) Professional review--A review of clinical and/or professional practice(s) by peer professionals.

(37) Program--A facility, local authority, community center, or HCS.

(38) Reporter--The person, who may be anonymous, making an allegation.

(39) Serious physical injury (in Community Centers, Local Authorities, licensed ICFs-ID and HCS Programs)--Any injury determined to be serious by the appropriate medical personnel. Examples of serious physical injury include the following:

(A) fracture;
(B) dislocation of any joint;
(C) internal injury;
(D) contusion larger than two and one-half inches in diameter;
(E) concussion;
(F) second or third degree burn; or
(G) any laceration requiring sutures.

(40) Serious physical injury (in DADS and DSHS facilities only)--Any injury requiring medical intervention or hospitalization or any injury determined to be serious by a physician or advanced practice nurse (APN). Medical intervention is treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician's assistant, or advanced practice nurse (APN). For the purposes of this subchapter, medical intervention does not include first aid, an examination, diagnostics (e.g., x-ray, blood test), or the prescribing of oral or topical medication.

(41) Sexually transmitted disease--Any infection with or without symptoms or clinical manifestations that can be transmitted from one person to another by sexual contact.

(42) Victim--A person served who is alleged to have been abused, neglected, or exploited.

§711.13. How is sexual abuse defined?

(a) In this chapter, when the alleged perpetrator is an employee, agent, or contractor, sexual abuse is defined as any sexual activity, including but not limited to:

(1) kissing a person served with sexual intent;
(2) hugging a person served with sexual intent;
(3) stroking a person served with sexual intent;
(4) fondling a person served with sexual intent;
(5) engaging in with a person served:
(A) sexual conduct as defined in the Texas Penal Code, §43.01; or
(B) any activity that is obscene as defined in the Texas Penal Code, §43.21;
(6) requesting, soliciting, or compelling a person served to engage in:

(b) Notwithstanding any other provision in this section, consensual sexual activity between an employee, agent, or contractor, and an alleged victim is not considered sexual abuse if the consensual sexual relationship began prior to the employee, agent, or contractor becoming a paid employee, agent, or contractor.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. CONDUCTING THE INVESTIGATION

40 TAC §711.405

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.
The amendment implements HRC §48.255, and House Bill 1481, 82nd Legislature, Regular Session.

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SUBCHAPTER G. RELEASE OF REPORT AND FINDINGS

40 TAC §711.611, §711.613

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §48.255, and House Bill 1481, 82nd Legislature, Regular Session.

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SUBCHAPTER K. REQUESTING A REVIEW OF FINDING IF YOU ARE THE ADMINISTRATOR OR CONTRACTOR CEO

40 TAC §711.1013, §711.1015

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §40.021 and §48.255.

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SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY
The amendments and new section are adopted under Human Resources Code (HRC) §§40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC §40.021 and §48.101; and Senate Bill 221 and House Bill 1481, 82nd Legislature, Regular Session.

§711.1402. How are the terms in this subchapter defined?
The following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

1. Administrative law judge—An attorney who serves as a hearings examiner and conducts an EMR hearing;
2. Agency—An entity, person or facility as defined in §48.401(1), Human Resources Code;
3. APS--The Adult Protective Services division within the Department of Family and Protective Services, which is authorized to conduct investigations of alleged abuse, neglect, or exploitation of certain adults under Chapter 48, Human Resources Code, and certain children under §261.404, Family Code;
4. Commissioner--The commissioner of the Department of Family and Protective Services (DFPS) or the commissioner's designee;
5. Department--The Department of Family and Protective Services;
6. Designated perpetrator--A person determined by APS to have committed abuse, neglect, or exploitation who may be eligible for inclusion on the Employee Misconduct Registry, when the abuse, neglect or exploitation meets the definition of reportable conduct;
7. Employee--A person who performs services for an agency, whether as an employee, contractor, volunteer, or agent;
8. EMR--The Employee Misconduct Registry;
9. EMR hearing--An administrative hearing offered to a person who has been found to have committed reportable conduct for the purpose of appealing the finding of reportable conduct as well as the underlying finding of abuse, neglect, or exploitation;
10. Facility investigation--An investigation conducted by APS under Chapter 48, Subchapters F and H, Human Resources Code, that involves an employee of one of the following agency types:
   A. a home and community-based services (HCS) provider;
   B. a community center as defined in §531.002, Health and Safety Code;
   C. a licensed intermediate care facility for persons with intellectual disabilities and related conditions (ICF-ID);
   D. a local authority as defined in this chapter;
   E. the Rio Grande State Center;
   F. a state-supported living center; or
   G. a state hospital;
11. HCSSA--A home and community support services agency, sometimes referred to as a home health agency, licensed under Chapter 142, Health and Safety Code;
12. HCS--A person or an agency exempt from licensure under §142.003(a)(19), Health and Safety Code, that provides home and community-based services to persons with intellectual disabilities and related conditions;
13. ICF-ID--An intermediate care facility for individuals with intellectual disabilities and related conditions. A licensed ICF-ID is a privately owned and operated facility licensed by the Department of Aging and Disability Services under Chapter 252, Health and Safety Code. A state supported living center operated by DADS or DSHS is also an ICF-ID. A local authority may also operate an ICF-ID;
14. In-home investigation--An investigation conducted by APS under Chapter 705 of this title (relating to Adult Protective Services);
15. Person served--An adult or child receiving services from an agency as defined in this subchapter;
16. Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this title (relating to What is reportable conduct?);
17. Rio Grande State Center--A facility operated by the Department of State Health Services that provides in-patient mental health services and services through an ICF-ID;
18. State hospital--A hospital operated by the Department of State Health Services that provides in-patient mental health services;
19. State supported living center--An ICF-ID operated by the Department of Aging and Disability Services.

§711.1404. How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation defined for In-home investigations?
For In-home investigations, the definitions of physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation are defined in Chapter 705 of this title (relating to Adult Protective Services) in the rules adopted pursuant to §48.002(c) of the Human Resources Code. Additional guidance for some of the terms used in these definitions can be found at §705.1001 of this title (relating to How are the terms in this chapter defined?). The following definitions apply:

1. "Physical abuse."
   A. When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused physical injury, death, or emotional harm.
   B. When an alleged perpetrator is a paid caretaker, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused or may have caused physical injury, death, or emotional harm.

2. "Sexual abuse."
(A) When an alleged perpetrator is a caretaker or paid
caretaker, family member, or other individual who has an ongoing
relationship with the alleged victim, sexual abuse is defined as nonconsen-
sual sexual activity, which may include, but is not limited to, any ac-
tivity that would be a sexually-oriented offense per Texas Penal Code,
Chapters 21, 22, or 43.

(B) There is no consent when:
(i) the alleged perpetrator knows or should know
that the alleged victim is incapable of consenting because of impair-
ment in judgment due to mental or emotional disease or defect;
(ii) consent is induced by force or threat against any
person;
(iii) the alleged victim is unconscious or physically
unable to resist;
(iv) the alleged perpetrator has intentionally im-
paired the alleged victim by administering any substance without the
person's knowledge; or
(v) consent is coerced due to fear of retribution or
hardship, or by exploiting the emotional dependency of the alleged vic-
tim on the alleged perpetrator.

(3) "Emotional or verbal abuse."

(A) When an alleged perpetrator is a caretaker, family
member, or other individual who has an ongoing relationship with the
alleged victim, emotional or verbal abuse is defined as any act or use
of verbal or other communication to threaten violence that makes a
reasonable person fearful of imminent physical injury.

(B) When an alleged perpetrator is a paid caretaker,
emotional or verbal abuse is defined as any act or communication that
is:
(i) used to curse, vilify, humiliate, degrade, or
threaten and that results in emotional harm; or
(ii) of such a serious nature that a reasonable person
would consider it emotionally harmful.

(4) "Neglect."

(A) When the alleged perpetrator is an alleged vic-
tim/perpetrator, neglect is defined as the failure of one's self to provide
the protection, food, shelter, or care necessary to avoid emotional
harm or physical injury.

(B) When an alleged perpetrator is a caretaker or paid
caretaker, neglect is defined as:
(i) the failure to provide the protection, food, shelter,
or care necessary to avoid emotional harm or physical injury; or
(ii) a negligent act or omission that caused or may
have caused emotional harm, physical injury, or death.

(5) "Financial exploitation."

(A) When an alleged perpetrator is a caretaker or paid
caretaker, family member, or other individual who has an ongoing
relationship with the alleged victim, financial exploitation is defined as
the illegal or improper act or process of an alleged perpetrator using, or
attempting to use, the resources of the alleged victim, including the
alleged victim's social security number or other identifying information,
for monetary or personal benefit, profit, or gain without the informed
consent of the alleged victim. There is no informed consent when it is:
(i) not voluntary;
(ii) induced by deception or coercion; or
(iii) given by an alleged victim who the actor knows
or should have known to be unable to make informed and rational deci-
dions because of diminished capacity or mental disease or defect.

(B) When an alleged perpetrator is a caretaker, family
member, or other individual who has an ongoing relationship with the
alleged victim, financial exploitation excludes Theft in Chapter 31 of
the Texas Penal Code.

(C) When an alleged perpetrator is a paid caretaker, fi-
nancial exploitation includes, but is not limited to, Theft in Chapter 31
of the Texas Penal Code.

§711.1406. How are the terms abuse, neglect, and financial exploita-
tion defined for facility investigations?

(a) For facility investigations, the definitions of abuse, ne-
grant, and exploitation are contained in rules adopted pursuant to
§48.251, Human Resources Code, and §261.404, Family Code. The
following definitions apply:

(1) "Abuse" includes physical abuse, sexual abuse, sexual
exploitation, and emotional or verbal abuse, as those terms are defined
in this section.

(2) "Physical abuse" means:

(A) an act or failure to act performed knowingly, reck-
lessly, or intentionally, including incitement to act, which caused or
may have caused physical injury or death to a person served;

(B) an act of inappropriate or excessive force or corpo-
ral punishment, regardless of whether the act results in a physical injury
to a person served; or

(C) the use of chemical or bodily restraints on a person
served not in compliance with federal and state laws and regulations
(including the laws and regulations listed in §711.11(3) of this title (re-
lating to How is physical abuse defined?).

(3) "Neglect" means a negligent act or omission by any in-
dividual responsible for providing services to a person served, which
caused or may have caused physical or emotional injury or death to
a person served or which placed a person served at risk of physical or
emotional injury or death. Examples of neglect are listed in §711.19(1)
- (3) of this title (relating to How is neglect defined?).

(4) "Sexual" abuse means any sexual activity, including but
not limited to:

(A) kissing a person served with sexual intent;
(B) hugging a person served with sexual intent;
(C) stroking a person served with sexual intent;
(D) fondling a person served with sexual intent;
(E) engaging in with a person served:

(i) sexual conduct as defined in §43.01, Penal Code;
(ii) any activity that is obscene as defined in §43.21,
Penal Code;

(F) requesting, soliciting or compelling a person served
to engage in:

(i) sexual conduct as defined in §43.01, Penal Code;
(ii) any activity that is obscene as defined in §43.21,
(G) in the presence of the person served:
   (i) engaging in or displaying an activity that is obscene as defined in §43.21, Penal Code; or
   (ii) requesting, soliciting or compelling another person to engage in any activity that is obscene as defined in §43.21, Penal Code;

(H) committing sexual exploitation against a person served;

(I) committing sexual assault as defined in §22.011, Penal Code, against a person served;

(J) committing aggravated sexual assault as defined in §22.021, Penal Code, against a person served; and

(K) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, videotaping or depicting of a person served if the employee agent or contractor knew or should have known that the resulting photograph, film, videotape, or depiction of the person served is obscene as defined in §43.21, Penal Code, or is pornographic.

(5) "Sexual exploitation" means a pattern, practice or scheme of conduct against a person served, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person; the term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

(6) "Financial exploitation" means the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit or gain.

(7) "Verbal or emotional abuse" means any act or use of verbal or other communication, including gestures, to curse, vilify, or degrade a person served; or threaten a person served with physical or emotional harm. The act or communication must result in observable distress or harm to the person served or be of such a serious nature that a reasonable person would consider it harmful or causing distress.

(b) Notwithstanding any other provision in subsection (a)(4) of this section, which is the definition for "sexual abuse," consensual sexual activity between an employee, agent, or contractor, and an alleged victim is not considered sexual abuse if the consensual sexual relationship began prior to the employee, agent, or contractor becoming a paid employee, agent, or contractor.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2012.
TRD-201204130
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2012
Proposal publication date: May 18, 2012
For further information, please call: (512) 438-3437

40 TAC §711.1404

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §40.021 and §48.101; and Senate Bill 221 and House Bill 1481, 82nd Legislature, Regular Session.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 6, 2012.
TRD-201204131
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2012
Proposal publication date: May 18, 2012
For further information, please call: (512) 438-3437

37 TexReg 6330 August 17, 2012 Texas Register
Proposed Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

The Employees Retirement System of Texas will review and consider whether to re-adopt, re-adopt with amendments, or repeal Texas Administrative Code, Title 34, Chapter 79, concerning Social Security. This review is being conducted pursuant to Texas Government Code §2001.039.

ERS will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the Texas Register to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, September 17, 2012, at 10:00 a.m. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the Texas Register and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-201204088

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: August 2, 2012

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2


Relating to the review of 19 TAC Chapter 100, Subchapter A, the SBOE finds that the reasons for adopting Subchapter A continue to exist and readopts the rules. The SBOE received comments related to the review of Subchapter A. Following is a summary of the public comments received and the corresponding responses.

Comment: Concerning 19 TAC §100.1, the Texas Charter Schools Association (TCSA) commented that, to improve the correlation between the charter authorization process and student success, the scoring rubric for charter applications should be adjusted to measure more elements of successful school operations. Specifically, the TCSA stated that the application rubric should be adjusted so that more aspects of the charter application are scored by the external review panel, commenting that certain critical elements of school success, such as planned approaches for special programs and students with special needs, proposed geographic boundaries, admissions and enrollment policies, governance structure, and business plans, are evaluated only by Texas Education Agency (TEA) staff for statutory and regulatory compliance. The TCSA further commented that this practice results in the applicant being held accountable during the interview before the SBOE Committee on School Initiatives only if a committee member raises issues or questions identified by TEA staff. The TCSA suggested that incorporating some of the critical elements into the scoring rubric will allow the SBOE to better identify applications with the strongest likelihood of creating and sustaining a high quality charter school.

Response: The SBOE agrees that certain critical elements referenced by the TCSA are currently not scored by the external review panel and also offers the following clarification. While the scoring rubric for charter applications is not addressed in SBOE rules, it is adopted each time that the SBOE adopts the guidelines and application for open-enrollment charter schools. The SBOE will consider which sections of an application for charter should be scored when it adopts the Generation 18 guidelines and application and each subsequent set of guidelines and application. As such, the SBOE may elect to incorporate the proposals of the TCSA in its adoption of future guidelines and application processes. Additionally, it should be noted that the SBOE currently approves an application for charter contingent on the applicant addressing all issues noted by TEA staff in the TEA’s review of the application. Therefore, no contract for charter is awarded until the applicant has addressed all issues identified by TEA staff, regardless of whether the issue is mentioned in the interview.

Comment: Concerning 19 TAC §100.1(d), the TCSA commented that the SBOE should increase the knowledge and expertise required for members of the external review panel that scores charter applications. Specifically, the TCSA suggested that the process by which the commissioner and SBOE solicit volunteers to review the applications be re-
placed with a competitive selection process and compensation for those chosen to participate in the review. The TCJA further recommended that selected reviewers be required to participate in an orientation that includes the history and fundamental aspects of public charter schools, the structure of the request for application, and guidance on panelist responsibilities and the scoring rubric.

Response: The SBOE agrees and also offers the following clarification. While, at this time, no specific source of funding is available to pay individuals to review and score charter applications, the SBOE approved for first reading and filing authorization in July 2012 a proposed amendment to SBOE rules that would establish a request for qualifications (RFQ) process for selecting individuals to participate on the external review panel. TEA staff also is exploring options for providing more guidance to selected reviewers, including required participation in an orientation session. However, until compensation can be provided to reviewers, required participation in an orientation session may limit the number of potential reviewers who apply through the RFQ process.

Comment: The TCJA commented that the current charter application process should be refined so that greater weight is given to objective, scored criteria and that the current requirement that the external review panel assign an average score of 75% to an application before that application can be considered by the SBOE Committee on School Initiatives is too lenient. The TCJA further commented that a threshold score of 85% or 90% on a determined scale should be required for an application to be deemed eligible to continue in the process and participate in an interview with the SBOE Committee on School Initiatives.

Response: The SBOE agrees that a higher standard of review is appropriate but also offers the following clarification. The average application score required by an applicant to gain an interview with the SBOE Committee on School Initiatives is not addressed in SBOE rule but, rather, is adopted each time that the SBOE adopts the guidelines and application for open-enrollment charters. The SBOE will consider the average score that is required when it adopts the Generation 18 guidelines and application and each subsequent set of guidelines and application. TEA staff plans to recommend a higher average score for the Generation 18 open-enrollment charter applications, and the SBOE will make a final determination regarding the scoring standard.

Comment: The TCJA commented that the SBOE should incorporate, over time and as appropriate, several principles and standards of charter authorization promoted by the National Association of Charter School Authorizers (NACSA), including three core principles related to high standards, school autonomy, and protection of student and public interests.

Response: The SBOE disagrees. It should not be construed that the SBOE opposes the core principles promoted by the NACSA, but the comments provided were not specific enough to be adopted as defined processes, procedures, and regulations within SBOE charter rules.

Comment: Concerning 19 TAC §100.1, the Texas Classroom Teachers Association (TCTA) commented that rule language should be included to promote charter applications that are innovative and unique and clarify that language copied and pasted from previous successful applicants is not acceptable.

Response: The SBOE agrees that, as referenced in the Texas Education Code (TEC), §12.001(a)(5), one of the purposes for charter schools is to encourage different and innovative learning methods. In accordance with 19 TAC §100.1(g), the SBOE, when determining whether to grant an open-enrollment charter, may consider the innovation evident in the program(s) proposed for the charter school. The SBOE disagrees that the scoring and selection criteria for charter applications should be addressed in SBOE rules. The scoring and selection criteria are adopted each time that the SBOE adopts the guidelines and application for open-enrollment charter schools.

Comment: Concerning 19 TAC Chapter 100, Subchapter A, the Texas American Federation of Teachers (TFT) commented that Texas’ greatest need with respect to charter schools is quality control and that comprehensive charter school reform is needed that combines strong new quality standards, increased oversight, and accountability. Specifically, in reviewing administrative rules pertaining to charter schools, the Texas AFT recommended attention to certain points, including actions that would ensure that the charter school application and approval process is open and understandable to applicants and to the public; ensure that all public schools are measured by high, realistic standards applied consistently; ensure adequate assistance and oversight for charter schools; promote sharing of lessons learned through success and failure among and between charter and traditional public schools; provide charter school opportunities while ensuring the highest possible education quality; and, to accurately inform policymakers, appraisal charter school academic performance realistically using all relevant data.

Response: The SBOE agrees in part and disagrees in part. The proposed amendment to 19 TAC §100.1015, published in the June 8, 2012, issue of the Texas Register (37 TexReg 4152), as well as the proposed amendment to 19 TAC §100.1, as approved by the SBOE for first reading and filing authorization in July 2012, would assist in making the charter application and approval process more open and understandable to applicants and the public. While it should not be construed that the SBOE opposes the other TCTA ideas related to standards, oversight, and accountability, the comments provided were not specific enough to be adopted as defined processes, procedures, and regulations within SBOE charter rules.

In July 2012, the SBOE approved for first reading and filing authorization proposed amendments to 19 TAC Chapter 100, Subchapter A, that would align SBOE rules pertaining to the charter application process with proposed commissioner of education rules, clarify the signatories on the original contract for charter, codify practices adopted through the annual governance report pertaining to which family members of board members and school officers must be disclosed, and expand the provisions that would apply to public senior college or university charters and public junior college charters.

Relating to the review of 19 TAC Chapter 100, Subchapter B, the SBOE finds that the reasons for adopting Subchapter B continue to exist and reads the rule. The SBOE received no comments related to the review of Subchapter B. No changes are necessary as a result of the review.

This concludes the review of 19 TAC Chapter 100.

37 TexReg 6332 August 17, 2012 Texas Register

TRD-201204139
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: August 6, 2012

Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission (THC) adopts the review of Texas Administrative Code, Title 13, Part 2, Chapter 24, relating to the Restricted Cultural Resource Information. This review was completed pursuant to Texas Government Code §2001.039.
The THC has assessed whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of Chapter 24 was reviewed to determine whether it was obsolete, reflected current legal and policy considerations, reflected current general provisions in the governance of the THC, and/or whether it was in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act). The THC proposed the review of 13 TAC Chapter 24 in the March 2, 2012, issue of the Texas Register (37 TexReg 1517).

Relating to the review of 13 TAC Chapter 24, the THC finds the reasons for adopting Chapter 24 continue to exist and re-adopts the rules. The THC received no comments related to the review of Chapter 24. At a later date, the THC plans to propose revisions to clarify language in the administration of the program.

This concludes the review of 13 TAC Chapter 24.

TRD-201204158
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: August 7, 2012

Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the June 22, 2012, issue of the Texas Register (37 TexReg 4651), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for re-adoption, revision, or repeal Texas Administrative Code, Title 31, Part 17, Chapter 517, Subchapter B, §§517.22 - 517.37, concerning Cost-Share Assistance for Water Supply Enhancement, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist.

No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and re-adopts this chapter without change.

TRD-201204104
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: August 3, 2012

Pursuant to the notice of proposed rule review published in the June 22, 2012, issue of the Texas Register (37 TexReg 4652), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for re-adoption, revision, or repeal Texas Administrative Code, Title 31, Part 17, Chapter 527, §§527.1 - 527.7, concerning Removal of a District Director, in accordance with Texas Government Code, §2001.039.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist.

No comments were received on the proposed rule review.

As a result of the review, the State Board determined that the rules are still necessary and re-adopts this chapter without change.

TRD-201204105
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: August 3, 2012

RULE REVIEW August 17, 2012 37 TexReg 6333
TABLES & GRAPHICS Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.
**Figure: 10 TAC §80.25(j)(5)**

**INTERIOR SERVICE PANEL**

4-Wire System

- **Circuit Breakers**
- **Bonding Ground**
  - See NEC 310-12(b) for identifying equipment grounding conductors
- **Neutral**
- **Male Adapter wi/Lock Nut**
- **Listed for use as Electrical Raceway**
- **Color coded Connections**
- **Junction Box**
- **Conduit terminates below floor**

**MAIN PANEL BOX FEEDER CONDUCTOR SIZES**

<table>
<thead>
<tr>
<th>Main Breaker size (amps)</th>
<th>Raceway diameter</th>
<th>Red/Black (power)</th>
<th>White (neutral)</th>
<th>Green (grounding)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>1</td>
<td>#6</td>
<td>#6</td>
<td>#8</td>
</tr>
<tr>
<td>100</td>
<td>1 1/4</td>
<td>#2 or #3</td>
<td>#2 or #3</td>
<td>#6</td>
</tr>
<tr>
<td>150</td>
<td>1 1/2</td>
<td>#1/0 or #2/0</td>
<td>#2</td>
<td>#6</td>
</tr>
<tr>
<td>200</td>
<td>2</td>
<td>#3/0</td>
<td>#2</td>
<td>#6</td>
</tr>
<tr>
<td>Residential Child-Care Operations</td>
<td>Description</td>
<td>Type of Permit</td>
<td></td>
<td></td>
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<tr>
<td>----------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-----------------------------------------------------</td>
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<tr>
<td>(A) Foster Family Home (Independent)</td>
<td>An operation that provides care for six or fewer children up to the age of 18 years.</td>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(B) Foster Group Home (Independent)</td>
<td>An operation that provides care for seven to 12 children up to the age of 18 years.</td>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(C) General Residential Operation</td>
<td>An operation that provides child care for 13 or more children up to the age of 18 years. The care may include treatment services. Residential treatment centers are a type of general residential operation.</td>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(D) Child-Placing Agency (CPA)</td>
<td>A person, agency, or organization other than a parent who places or plans for the placement of a child in an adoptive home or other residential care setting.</td>
<td>License</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(E) Child-Placing Agency Foster Family Home</td>
<td>An operation that provides care for six or fewer children, up to the age of 18 years, under the regulation of a child-placing agency.</td>
<td>Verification (The CPA issues this. A CPA regulates its own foster family homes.)</td>
<td></td>
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</tr>
<tr>
<td>(F) Child-Placing Agency Foster Group Home</td>
<td>An operation that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency</td>
<td>Verification (The CPA issues this. A CPA regulates its own foster group homes.)</td>
<td></td>
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</tr>
<tr>
<td>Type of Application</td>
<td>Required Application Materials</td>
<td></td>
<td></td>
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<tr>
<td>----------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
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</tr>
</tbody>
</table>
| (1) Application for Listing a Family Home                | (A) A completed Listing Request Form;  
(B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter (relating to Background Checks);  
(C) A completed Controlling Person Form as set forth in Subchapter G of this chapter (relating to Controlling Person and Certain Employment Prohibited); and  
(D) The listing fee, if applicable.                                                                                                                                   |
| (2) Application for Registering a Child-Care Home        | (A) A completed Registration Request Form;  
(B) A completed Request for Criminal History and Central Registry Check Form on all applicable persons. See Subchapter F of this chapter;  
(C) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  
(D) A notarized Affidavit for Applicants for Employment with a Child-Care Facility or Registered Child-Care Home Form for any employee of the registered child-care home or any applicant you intend to hire;  
(E) Proof of current certification in infant/child/adult CPR;  
(F) Proof of current certification in first aid, which must include rescue breathing and choking;  
(G) The registration fee;  
(H) Verification that the applicant completed the required orientation within one year prior to the date of application; and  
(I) Proof of a high school diploma or high school equivalent.                                                                                                           |
| (3) Application for Licensing a Child Day-Care Operation  | (A) A completed Child Day-Care Licensing Application Form;  
(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;  
(C) A completed Governing Body/Director Designation Form. This form is not required if the governing body is a sole proprietorship and the proprietor is also the director;  
(D) Completed background checks on all applicable persons. See Subchapter F of this chapter;  
(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, and all persons designated as director or co-director;  
(F) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  
(G) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title (relating to How do I demonstrate that the governing body is not delinquent in paying the franchise tax?);  
(H) Except for licensed child-care homes, proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title (relating to What insurance coverage must I have for my licensed operation? and What are acceptable reasons for not obtaining liability insurance?). |
| (4) Application for a Compliance Certificate for a Shelter Care Operation | (A) A completed Shelter Child Care Application Form. If the law requires that the applicant keep the shelter care location confidential, the application must include on the application form a valid correspondence address and telephone number, including a method to immediately contact your operation that allows our staff to obtain your location address within 30 minutes;  
(B) Completed background checks on all applicable persons;  
(C) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title; and  
(D) The application fee. |
| --- | --- |
| (5) Application for a Compliance Certificate for an Employer-Based Child Care Operation | (A) A completed Employer-Based Child Care Application Form;  
(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;  
(C) Completed background checks on all applicable persons as required for licensed child-care centers. See Subchapter F of this chapter;  
(D) If the applicant is a for-profit corporation or limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title; and  
(E) The application fee. |
| (6) Application for Licensing a Residential Child-Care Operation including a Child-Placing Agency | (A) A completed Application for a License to Operate a Residential Child-Care Facility, or Child-Placing Agency;  
(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;  
(C) Completed background checks on all applicable persons. See Subchapter F of this chapter;  
(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  
(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed administrator;  
(F) If the applicant is a for-profit corporation or a limited liability company, proof that the corporation or company is not delinquent in paying the franchise tax. For information on franchise tax, see §745.245 of this title;  
(G) Proof of liability insurance or documentation that the applicant is unable to obtain liability insurance and a copy of the written notice informing the parents that there is no insurance coverage. For further information on liability insurance, see §745.249 and §745.251 of this title;  
(H) Policies, procedures, and documentation required by minimum standard rules;  
(I) The application fee; and  
(J) The initial license fee, if applicable. |
| (7) Application for Certifying a Child Day-Care Operation | (A) A completed Child Day-Care Licensing Application Form;  
(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor and outdoor space;  
(C) A completed Governing Body/Director Designation Form;  
(D) Completed background checks on all applicable persons. See Subchapter F of this chapter;  
(E) A completed Personal History Statement Form for all persons designated as director or co-director;  
(F) A completed Controlling Person Form as set forth in Subchapter G of this chapter; and  
(G) A completed Plan of Operation for Licensed Facilities Form. The plan of operation must show how you plan to comply with the minimum standards. |
| (8) Application for Certifying a Residential Child-Care Operation including a Child-Placing Agency | (A) A completed Application for a License to Operate a Residential Child-Care Facility, or Child-Placing Agency;  
(B) A floor plan of the building and surrounding space to be used, including dimensions of the indoor space;  
(C) Completed background checks on all applicable persons. See Subchapter F of this chapter;  
(D) A completed Controlling Person Form as set forth in Subchapter G of this chapter;  
(E) A completed Personal History Statement Form for each applicant that is a sole proprietor or partner, unless you are a licensed administrator; and  
(F) Policies, procedures, and documentation required by minimum standard rules. |
<table>
<thead>
<tr>
<th>Type and Amount of Fee</th>
<th>When Fee is Due</th>
<th>Consequences for Failure to Pay Fee on Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Application processing fee: $35</td>
<td>Before we accept your application</td>
<td>We will return your application as incomplete.</td>
</tr>
<tr>
<td>(2) Initial license fee for an operation (other than a child-placing agency): $35</td>
<td>Before we accept your application</td>
<td>We will return your application as incomplete.</td>
</tr>
<tr>
<td>(3) Initial license fee for a child-placing agency: $50</td>
<td>Before we accept your application</td>
<td>We will return your application as incomplete.</td>
</tr>
<tr>
<td>(4) Initial renewal fee for an operation (other than a child-placing agency): $35</td>
<td>Before we renew your initial license</td>
<td>We will deny the renewal of your initial license if you do not pay your fee by your renewal date.</td>
</tr>
<tr>
<td>(5) Initial renewal fee for a child-placing agency: $50</td>
<td>Before we renew your initial license</td>
<td>We will deny the renewal of your initial license if you do not pay your fee by your renewal date.</td>
</tr>
<tr>
<td>(6) Non-expiring license fee for an operation (other than a child-placing agency): $35 + $1 per licensed capacity</td>
<td>Before we issue you a non-expiring license</td>
<td>We will deny your license if you do not pay your fee by your issuance date.</td>
</tr>
<tr>
<td>(7) Non-expiring license fee for a child-placing agency: $100</td>
<td>Before we issue you a non-expiring license</td>
<td>We will deny your license if you do not pay your fee by your issuance date.</td>
</tr>
<tr>
<td>(8) Annual license fee for an operation (other than a child-placing agency): $35 + $1 per licensed capacity</td>
<td>On the anniversary date of your license</td>
<td>If you do not pay your fee when it is due, your license is automatically suspended until you pay your fee. If you do not pay your fee within six months of when your suspension begins, your license is automatically revoked.</td>
</tr>
<tr>
<td>(9) Annual license fee for a child-placing agency: $100</td>
<td>On the anniversary date of your license</td>
<td>If you do not pay your fee when it is due, your license is automatically suspended until you pay your fee. If you do not pay your fee within six months of when your suspension begins, your license is automatically revoked.</td>
</tr>
<tr>
<td>(10) Amendment fee for an operation or child-placing agency: $1 for each child that the current licensed capacity is increased.</td>
<td>Before we issue your amendment</td>
<td>We will deny your request for an increase in capacity.</td>
</tr>
<tr>
<td>(11) Background check fee: $2 per person</td>
<td>At the time you request a background check or on a monthly or quarterly basis</td>
<td>We may suspend and/or revoke your license.</td>
</tr>
<tr>
<td>Types of Central Registry Findings for Child Abuse or Neglect</td>
<td>Is This Person Eligible for a Risk Evaluation?</td>
<td>If This Person Is Eligible for a Risk Evaluation, May the Person be Present at an Operation While Children are in Care Pending the Outcome of the Risk Evaluation?</td>
</tr>
<tr>
<td>-------------------------------------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>(1) A Sustained DFPS Finding of Physical Abuse.</td>
<td>Except for a person described in subsection (b) of this section, this person is permanently barred from being present at an operation while children are in care. Persons described in subsection (b) of this section are eligible for a risk evaluation.</td>
<td>Except for a person described in subsection (b) of this section, this is not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. Persons described in subsection (b) of this section cannot be present at an operation while children are in care pending a risk evaluation. However, if the risk evaluation is approved, then they may be present at the operation.</td>
</tr>
<tr>
<td>(2) A Sustained DFPS Finding of Sexual Abuse.</td>
<td>No, this person is permanently barred from being present at an operation while children are in care.</td>
<td>Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care.</td>
</tr>
<tr>
<td>(3) A Sustained DFPS Finding of Emotional Abuse.</td>
<td>Yes</td>
<td>Yes, (i) if the person continued to work at the operation pending the outcome of due process for the designated finding because we had not determined the person’s presence at the same operation was an immediate threat or danger to the health or safety of children; or (ii) if we previously approved a risk evaluation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the person’s contact with children at the operation are the same as when we approved the risk evaluation.</td>
</tr>
<tr>
<td>(4) A Sustained DFPS Finding of Neglect (including neglectful supervision, physical neglect, medical neglect, and refusal to accept parental responsibility).</td>
<td>Yes</td>
<td>Yes, (i) if the person continued to work at the operation pending the outcome of due process for the designated finding because we had not determined the person's presence at the same operation was an immediate threat or danger to the health or safety of children; or (ii) if we previously approved a risk evaluation without conditions for the same finding, the more recent check does not reveal new information about the finding, and the circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>(5) A DFPS Finding, Not Already Sustained, of Any Types of Child Abuse or Neglect Previously Mentioned In This Chart, Where We Have Determined the Presence of the Person at an Operation Is an Immediate Threat or Danger to the Health or Safety of Children.</td>
<td>No, this person is temporarily barred from being present at an operation while children are in care.</td>
<td>Not applicable, because this person is not eligible for a risk evaluation. This person must not be present at an operation while children are in care. Note: The removal from contact with children is not permanent until the finding is sustained.</td>
</tr>
<tr>
<td>(6) A Finding of Abuse or Neglect from another state or jurisdiction, regardless of whether the finding is sustained.</td>
<td>The person's eligibility for a risk evaluation is the same as the relevant sustained DFPS finding noted in sections (1) - (4) of this chart.</td>
<td>The person's ability to be present at an operation while children are in care pending the outcome of a risk evaluation is the same as the relevant sustained DFPS finding noted in sections (1) - (4) of this chart.</td>
</tr>
</tbody>
</table>
Department of Assistive and Rehabilitative Services

Notice of Public Hearing for Proposed Office for Deaf and Hard of Hearing Services Rules

The Texas Department of Assistive and Rehabilitative Services (DARS) will hold a public hearing to receive testimony regarding proposed rules to Texas Administrative Code (TAC), Title 40, Chapter 109, Office for Deaf and Hard of Hearings Services, relating to Subchapter A, General Rules; Subchapter B, Board for Evaluation of Interpreters; Subchapter C, Specialized Telecommunications Assistance Program; Subchapter D, Deaf and Hard of Hearing Driver Identification Program; and Subchapter E, Certificate of Deafness for Tuition Waiver.

The proposed rulemaking is the result of the required 4-year rule review conducted by DARS. The proposed amendments to the DARS Office for Deaf and Hard of Hearing Services (DHHS) rules may have substantive impact upon DHHS stakeholders. DARS, therefore, seeks to give the public and specifically DHHS stakeholders an advance opportunity to review and comment upon the proposed amendments prior to formally publishing the proposed amendments in the Texas Register.

DARS will hold a public hearing on this proposal on August 30, 2012, from 4:30 p.m. until 6:30 p.m., at the Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Austin, Texas 78756. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing. However, DARS staff will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the DARS Inquiries Line at 1-800-628-5115. Requests should be made five business days before the date of the hearing.

Written comments may be submitted to the Texas Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Boulevard, Attention: Margaret Susman, Austin, Texas 78751. Electronic comments may be submitted to DARS_Rules@dars.state.tx.us. The comment period closes September 10, 2012.

Copies of the draft proposed rules may be obtained from the DARS Web site at: http://www.dars.state.tx.us/dhhs/index.shtml or by contacting Margaret Susman at (512) 407-3263, for a copy or for further information.

TRD-201204153

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: August 6, 2012

Office of the Attorney General

Notice of Settlement of Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Health and Safety Code and the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Health and Safety Code and the Texas Water Code.

Case Title and Court: State of Texas v. George Williams, Cause No. D-1-GV-10-000115, in the 353rd Judicial District Court, Travis County, Texas.

Background: This suit alleges violations of the rules promulgated by the Texas Commission on Environmental Quality under the Texas Health and Safety Code related to the disposal and burning of municipal solid waste. The Defendant, George Williams, owns and operates an unauthorized municipal solid waste disposal facility in Bexar County, Texas. The suit seeks civil penalties, administrative penalties, injunctive relief, attorneys fees, and court costs.

Proposed Agreed Final Judgment: The Agreed Final Judgment orders Defendant, George Williams, to pay $12,000.00 in civil penalties and $2,000.00 in administrative penalties. In addition, the Defendant will pay $3,312.50 in attorney's fees to the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Marshall Coover, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201204155
Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 6, 2012

Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111, Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards. The Comptroller’s Request for Qualifications 203b (RFQ) related to these contract awards was published in the April 13, 2012, issue of Texas Register (37 TexReg 2772).
The examiners will provide Professional Contract Examination Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that ten (10) contracts were awarded as follows:

A contract is awarded to Delores A. Nornberg, 7518 Briecesco Drive, Corpus Christi, Texas 78414. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Thomas W. Gay, 1100 Live Oak Loop, Buda, Texas 78610. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Taygor Associates, LLC, 1124 Native Garden Cove, Round Rock, Texas 78681. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Michael J. Robertson, CPA, 4381 W. Green Oaks Blvd., Suite 105, Arlington, Texas 76016. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Cynthia Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Sam W. Armstrong, PC, 27403 Manor Falls Lane, Fulshear, Texas 77441. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Texas Tax Consulting Group, LC, 6116 Ayers Street, Suite 2C, Corpus Christi, Texas 78415. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

A contract is awarded to Gordon Wheeler, 8410 Neff Street, Houston, Texas 77036. Examinations will be assigned in $60,000 - $75,000 examination packages per individual examiner but no contract examiner shall have examination packages totaling more than $180,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2012 through August 31, 2013, with two (2) one (1) year options to renew.

The ten (10) contracts above are the final awards that the Comptroller will make under this RFQ.

TRD-201204200
Jette Withers
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 8, 2012

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/13/12 - 08/19/12 is 18% for Consumer1/Agricultural/Commercial2 credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/13/12 - 08/19/12 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/12 - 08/31/12 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.003 for the period of 08/01/12 - 08/31/12 is 18% for Commercial over $250,000.

1 Credit for personal, family or household use.
2 Credit for business, commercial, investment or other similar purpose.
3 For variable rate commercial transactions only.

TRD-201204181
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 7, 2012

Commission on State Emergency Communications

Annual Review of §255.4 - Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line
The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" as required by Health and Safety Code §771.063(c). CSEC has initially determined that the current definitions sufficiently define the terms.

Persons wishing to comment on CSEC's initial determination or recommend amendments to §255.4 may do so by submitting written comments within 30 days following publication of this notice in the Texas Register to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Comments should include in the subject line "Comments on CSEC's Annual Review of Rule 255.4."

TRD-201204095
Patrick Tyler
General Counsel
Commission on State Emergency Communications
Filed: August 3, 2012

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is September 17, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on September 17, 2012. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Alon USA, LP; DOCKET NUMBER: 2012-0356-IWD-E; IDENTIFIER: RN100250869; LOCATION: Big Spring, Howard County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0001768000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0001768000, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; PENALTY: $17,460; ENFORCEMENT COORDINATOR: Jacqueline Green, (512) 239-2587; REGIONAL OFFICE: 9900 West IH 20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(2) COMPANY: Azteca Milling, L.P.; DOCKET NUMBER: 2012-0408-AIR-E; IDENTIFIER: RN100215813; LOCATION: Plainview, Hale County; TYPE OF FACILITY: grain mill; RULE VIOLATED: 30 TAC §§122.121, 122.133(2) and 122.241(b) and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit a permit renewal application at least six months before the date of permit expiration; PENALTY: $16,500; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(3) COMPANY: Baylor University; DOCKET NUMBER: 2011-1036-AIR-E; IDENTIFIER: RN100215313; LOCATION: Waco, McLennan County; TYPE OF FACILITY: institutional power generating plant; RULE VIOLATED: 30 TAC §122.145(2) and §122.146(1) and (2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1872, General Terms and Conditions (GTC), by failing to certify compliance with the terms and conditions of the permit for at least each 12-month period following initial permit issuance; and 30 TAC §122.144(1), THSC, §382.085(b) and FOP O1872, GTC, by failing to maintain records; PENALTY: $20,000; Supplemental Environmental Project offset amount of $16,000 applied to Texas Parent Teacher Association (PTA) - Texas PTA Clean School Buses; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Cargill Meat Solutions Corporation; DOCKET NUMBER: 2011-0650-AIR-E; IDENTIFIER: RN101634368; LOCATION: Plainview, Hale County; TYPE OF FACILITY: beef processing plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and Air Permit Number 4844, Special Conditions Number 1, by failing to comply with the hourly emission rate; PENALTY: $6,100; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(5) COMPANY: City of Grand Saline; DOCKET NUMBER: 2012-0867-MWD-E; IDENTIFIER: RN102330081; LOCATION: Grand Saline, Van Zandt County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010179001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and 30 TAC §305.125(1) and (17) and §319.7(d), and TPDES Permit Number WQ0010179001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Jacqueline Green, (512) 239-2587; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Houston; DOCKET NUMBER: 2012-0980-PST-E; IDENTIFIER: RN102389103; LOCATION: Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system for a former emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $1,500; ENFORCEMENT COORDINATOR:...
(7) COMPANY: City of Lefors; DOCKET NUMBER: 2012-0679-MWD-E; IDENTIFIER: RN1012184546; LOCATION: Lefors, Gray County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQNO010411001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $8,980; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: City of McGregor; DOCKET NUMBER: 2012-0940-PWS-E; IDENTIFIER: RN1013871999; LOCATION: McGregor, McLennan County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.46(m)(1)(A), by failing to inspect the ground storage tanks and elevated storage tanks annually; 30 TAC §290.44(h)(4), by failing to ensure that all backflow prevention assemblies are tested on an annual basis by a recognized backflow assembly tester who certifies that they are operating within specifications; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.44(h)(1)(A), by failing to ensure that backflow prevention assemblies or an air gap is installed at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TAC §290.47(i); PENALTY: $1,357; ENFORCEMENT COORDINATOR: Michaele Sherlock, (210) 403-4076; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: City of Mertens; DOCKET NUMBER: 2012-0452-MWD-E; IDENTIFIER: RN101407815; LOCATION: Mertens, Hill County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013271001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013271001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2011, by September 1, 2011; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Jacqualyn Green, (512) 239-2587; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Dia-Den Ltd.; DOCKET NUMBER: 2012-0516-MWD-E; IDENTIFIER: RN102078482; LOCATION: Tomball, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013893001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0013893001, Sludge Provisions, by failing to timely submit the annual sludge report by September 1, 2011 for the monitoring period ending July 31, 2011; PENALTY: $2,124; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Donna P. Arnold dba The Fillin Station; DOCKET NUMBER: 2012-1108-PST-E; IDENTIFIER: RN102350741; LOCATION: Carthage, Panola County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $5,755; ENFORCEMENT COORDINATOR: Laranee Foad, (512) 239-2554; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.


(13) COMPANY: GOLAKIA & SINGH LLC dba Harvey's; DOCKET NUMBER: 2012-0830-PST-E; IDENTIFIER: RN102376506; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months; 30 TAC §115.242(3) and (9) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system and by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received trained in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operating procedure of the vapor recovery system; and 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for review upon request by agency personnel; PENALTY: $6,720; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: GUR DIYA LLC dba Food and Fuels; DOCKET NUMBER: 2012-0926-PST-E; IDENTIFIER: RN102063930; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,250; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: HJTVE, Incorporated dba Lakeside Travel Plaza; DOCKET NUMBER: 2012-0471-PST-E; IDENTIFIER: RN105560619; LOCATION: Iowa Park, Wichita County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vi), by failing to obtain an underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a)
and (c)(1), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST; PENALTY: $10,614; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(16) COMPANY: IOWA PARK READY-MIX, INCORPORATED; DOCKET NUMBER: 2012-0526-IWD-E; IDENTIFIER: RN102055985; LOCATION: Iowa Park, Wichita County; TYPE OF FACILITY: ready-mix concrete plant; RULE VIOLATED: 30 TAC §305.125(1) and (17) and Texas Pollutant Discharge Elimination System General Permit Number TXG110858, Part III Permit Requirements, Sections A and D, and Part IV Standard Permit Conditions Number 7(f), by failing to timely submit monitoring results at the intervals specified in the permit; PENALTY: $2,730; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(17) COMPANY: Jake Hess dba Country Corner; DOCKET NUMBER: 2012-0664-PST-E; IDENTIFIER: RN102248168; LOCATION: McLean, Gray County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,737; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(18) COMPANY: KAISING, INCORPORATED dba Coastal Express; DOCKET NUMBER: 2012-0793-PST-E; IDENTIFIER: RN102266640; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $3,290; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Katy ISD; DOCKET NUMBER: 2012-1328-WQ-E; IDENTIFIER: RN106149867; LOCATION: Katy, Fort Bend County; TYPE OF FACILITY: high school construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (stormwater); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Longview Independent School District; DOCKET NUMBER: 2012-0985-PST-E; IDENTIFIER: RN101814242; LOCATION: Longview, Gregg County; TYPE OF FACILITY: non-retail fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the underground storage tank system; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: METHAB CORPORATION, INCORPORATED dba Rainbow Quick Stop; DOCKET NUMBER: 2012-0584-PST-E; IDENTIFIER: RN101812360; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: MUREE VALLEY INTERNATIONAL, INCORPORATED dba Circle M Food Mart; DOCKET NUMBER: 2012-0535-PST-E; IDENTIFIER: RN101630267; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; and 30 TAC §334.10(b), by failing to maintain UST records and making them immediately available for inspection upon request by agency personnel; PENALTY: $10,386; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: NOBLE INVESTMENTS, LLC dba C Store 12; DOCKET NUMBER: 2012-0715-PST-E; IDENTIFIER: RN102364437; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: Pacer LLC dba South Central 1st Gas Beer & Wine; DOCKET NUMBER: 2012-0393-PST-E; IDENTIFIER: RN101433225; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,300; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: SONIA AND BPSC, INCORPORATED dba Handy Stop; DOCKET NUMBER: 2012-0525-PST-E; IDENTIFIER: RN101908200; LOCATION: Mineral Wells, Palo Pinto County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between
each monitoring); PENALTY: $7,500; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Texas A&M University; DOCKET NUMBER: 2012-0775-AIR-E; IDENTIFIER: RN100216274; LOCATION: College Station, Brazos County; TYPE OF FACILITY: university with a utilities plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Number 44762, Special Conditions (SC) Numbers 10.B. and 10.C. and Federal Operating Permit (FOP) Number O1624, Special Terms and Conditions (STC), by failing to conduct quarterly cylinder gas audits; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 44762, SC Number 10.B. and FOP Number O1624, STC Number 6.A., by failing to report the unscheduled continuous emissions monitoring system downtime by the end of the next business day; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 44762, SC Number 10 and FOP Number O1624, STC Number 6.A., by failing to continuously monitor for nitrogen oxides, carbon monoxide, and oxygen from Boiler Number 12; PENALTY: $9,890; ENFORCEMENT COORDINATOR: Rebecca Johnson, (409) 899-8785; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: The University of Texas MD Anderson Cancer Center; DOCKET NUMBER: 2012-0628-PST-E; IDENTIFIER: RN100230085; LOCATION: Houston, Harris County; TYPE OF FACILITY: hospital with an associated backup power generator; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $1,925; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: UNITED BIG D, INCORPORATED dba Big D Food Store; DOCKET NUMBER: 2012-0826-PST-E; IDENTIFIER: RN101537546; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(iv) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $2,862; ENFORCEMENT COORDINATOR: Thane Barkley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: W B Diamond Investments, Incorporated dba Petco City; DOCKET NUMBER: 2012-0521-PST-E; IDENTIFIER: RN105984553; LOCATION: Mesquite, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) system for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $5,129; ENFORCEMENT COORDINATOR: Trina Greico, (210) 403-4006; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: West Harris County Municipal Utility District Number 7; DOCKET NUMBER: 2012-0680-MWD-E; IDENTIFIER: RN102915840; LOCATION: Katy, Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), §30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0012140001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $14,062; ENFORCEMENT COORDINATOR: Jacqueline Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201204162
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 7, 2012

Enforcement Orders

An agreed order was entered regarding City of Pasadena, Docket No. 2011-0432-PST-E on July 20, 2012, assessing $7,350 in administrative penalties with $1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ARG Partners, Ltd. dba GF PARTNERS, LTD. dba Passport 45, Docket No. 2011-0467-PST-E on July 20, 2012, assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAKARA ENTERPRISE, L.P. dba T & M Commerce Beer & Wine, Docket No. 2011-1277-PST-E on July 20, 2012, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NEF Partners, Inc., Docket No. 2011-1482-AIR-E on July 20, 2012, assessing $6,516 in administrative penalties with $1,303 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SIRA C-STORE, INC. dba Houston C Store, Docket No. 2011-1496-PST-E on July 20, 2012, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AL-ROYAL INC. dba T.J.’s Grocery and Market, Docket No. 2011-1539-PST-E on July 20, 2012, assessing $2,004 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson, Enforcement Coordinator at (512)
An agreed order was entered regarding City of Arlington, Docket No. 2011-1707-PST-E on July 20, 2012, assessing $6,100 in administrative penalties with $1,220 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lockhart, Docket No. 2011-1718-PST-E on July 20, 2012, assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bahadurali Alibhai dba HUB Food Store, Docket No. 2011-1898-PST-E on July 20, 2012, assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Anamicio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Malloy Group, Inc. dba Malloy Mart, Docket No. 2011-2066-PST-E on July 20, 2012, assessing $5,625 in administrative penalties with $1,125 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dallas and Jet Center of Dallas, LLC, Docket No. 2011-2048-PST-E on July 20, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NAQIB ENTERPRISES, INC. dba Food Town 3, Docket No. 2011-2068-PST-E on July 20, 2012, assessing $6,120 in administrative penalties with $1,224 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HASINA INC. dba Tejani Chevron, Docket No. 2011-2104-PST-E on July 20, 2012, assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Steven A. Hibdon and Janie Hibdon dba Hill Country Mobile Home Park, Docket No. 2011-2147-PWS-E on July 20, 2012, assessing $3,599 in administrative penalties with $719 deferred.

Information concerning any aspect of this order may be obtained by contacting Michelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patti Eckert, Docket No. 2011-2197-MSW-E on July 20, 2012, assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JACINTO ENTERPRISES, INC. dba Siesta Grocery, Docket No. 2011-2203-PST-E on July 20, 2012, assessing $2,180 in administrative penalties with $436 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FAA HOUSTON TRACON DISTRICT 190, Docket No. 2011-2218-PST-E on July 20, 2012, assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EKN CORPORATION dba SSG ALL SEASONS, Docket No. 2011-2256-PST-E on July 20, 2012, assessing $2,554 in administrative penalties with $510 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2011-2257-AIR-E on July 20, 2012, assessing $3,125 in administrative penalties with $625 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Muhammad Zaman dba Hoff's Food Stop, Docket No. 2011-2284-PST-E on July 20, 2012, assessing $1,754 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samira Inc. dba Rajs Mart, Docket No. 2011-2294-PST-E on July 20, 2012, assessing $2,679 in administrative penalties with $535 deferred.
Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B. K. TRADING, INC. dba Speedy Stop 2, Docket No. 2011-2301-PST-E on July 20, 2012, assessing $6,129 in administrative penalties with $1,225 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jacob Dyck Wieler dba Hefty Trailer Manufacturing and Sales, Docket No. 2011-2306-AIR-E on July 20, 2012, assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harvey Ray Hawkins, Docket No. 2011-2314-LHI-E on July 20, 2012, assessing $1,288 in administrative penalties with $257 defered.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STRUCTURAL METALS, INC., Docket No. 2011-2321-IHW-E on July 20, 2012, assessing $5,475 in administrative penalties with $1,095 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry J. Appelt, Docket No. 2011-2345-MSW-E on July 20, 2012, assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oxy Vinlys, LP, Docket No. 2011-2352-AIR-E on July 20, 2012, assessing $7,500 in administrative penalties with $1500 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SKY 2 C, INC. dba Sky Food Mart, Docket No. 2011-2361-PST-E on July 20, 2012, assessing $5,500 in administrative penalties with $1,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gilbert A. Daniel and David James dba I-45 Shell Truck Stop, Docket No. 2011-2368-PST-E on July 20, 2012, assessing $3,881 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Victron Stores, L.P. dba Mikes Mini Market, Docket No. 2012-0025-PST-E on July 20, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. S. WATER UTILITY CONSOLIDATORS INC., Docket No. 2012-0028-MLM-E on July 20, 2012, assessing $160 in administrative penalties with $32 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marvin Lee Roland dba CDSI, LLC, Docket No. 2012-0049-MSW-E on July 20, 2012, assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LTT & HK INVESTMENTS, L.L.P. dba Dry Clean Super Center, Docket No. 2012-0052-DCL-E on July 20, 2012, assessing $3,775 in administrative penalties with $755 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, Enforcement Coordinator at (512) 239-2503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.
An agreed order was entered regarding City of Magnolia, Docket No. 2012-0055-MWD-E on July 20, 2012, assessing $1,773 in administrative penalties with $354 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Michaele Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GSC ENTERPRISES, INC. dba Grocery Supply, Docket No. 2012-0090-PST-E on July 20, 2012, assessing $3,880 in administrative penalties with $776 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2012-0093-AIR-E on July 20, 2012, assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tanda Management LLC dba Lucas Car Care, Docket No. 2012-0100-AIR-E on July 20, 2012, assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

IN ADDITION  August 17, 2012  37 TexReg 6353
An agreed order was entered regarding Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, Docket No. 2012-0219-PST-E on July 20, 2012, assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, P.G., Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rand Oil Co., LP dba Ruby's Food Mart 6, Docket No. 2012-0226-PST-E on July 20, 2012, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Community Bank National Association, Docket No. 2012-0238-EAQ-E on July 20, 2012, assessing $1,250 in administrative penalties with $250 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jiva Corporation, Inc. dba Primo Food Mart, Docket No. 2012-0262-PST-E on July 20, 2012, assessing $1,975 in administrative penalties with $395 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.


Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mexia Independent School District, Docket No. 2012-0296-PST-E on July 20, 2012, assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TT & C, LLC dba Shell-C Store, Docket No. 2012-0349-PST-E on July 20, 2012, assessing $3,547 in administrative penalties with $709 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crete Carrier Corporation, Docket No. 2012-0352-PST-E on July 20, 2012, assessing $2,016 in administrative penalties with $403 deferred.

Information concerning any aspect of this order may be obtained by contacting Thane Barkley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VST Enterprises Inc dba Sunny's Food Mart 4, Docket No. 2012-0372-PST-E on July 20, 2012, assessing $1,300 in administrative penalties with $260 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mark Stowe and Shirley Stowe, Docket No. 2012-0375-PST-E on July 20, 2012, assessing $1,876 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dallas County Schools, Docket No. 2012-0392-PST-E on July 20, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Carbide Corporation, Docket No. 2012-0399-AIR-E on July 20, 2012, assessing $5,150 in administrative penalties with $1,030 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shell Pipeline Company LP, Docket No. 2012-0401-AIR-E on July 20, 2012, assessing $5,100 in administrative penalties with $1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kevin's Texas Quick Stop, Inc., Docket No. 2012-0416-PST-E on July 20, 2012, assessing $2,054 in administrative penalties with $410 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MANILA CORPORATION dba Best Food Mart 3, Docket No. 2012-0430-PST-E on July 20, 2012, assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Ladingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sterling Collision Centers, Inc., Docket No. 2012-0442-AIR-E on July 20, 2012, assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.
An agreed order was entered regarding ANEEKA & SAFEER, INC. dba Tidwell Food Store, Docket No. 2012-0505-PST-E on July 20, 2012, assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Centerville Independent School District, Docket No. 2012-0511-PST-E on July 20, 2012, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blake Site Corp., Docket No. 2012-0530-WQ-E on July 20, 2012, assessing $938 in administrative penalties with $187 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding WTL Sand and Gravel LLC, Docket No. 2012-0716-WR-E on July 20, 2012, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Joe Bland Construction LP, Docket No. 2012-0717-WQ-E on July 20, 2012, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Oncor Electric Delivery Company LLC, Docket No. 2012-0718-WQ-E on July 20, 2012, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ernesto E. Gomez, Docket No. 2012-0719-WOC-E on July 20, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Mary Kiteley, Docket No. 2012-0728-OSSE-E on July 20, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Amal Dana dba Rivercrest Service Station, Docket No. 2012-0797-PST-E on July 20, 2012, assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ordia B. Webster, Docket No. 2012-0810-WOC-E on July 20, 2012, assessing $175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Clarence Waller, Docket No. 2012-0846-WR-E on July 20, 2012, assessing $350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201204195
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 8, 2012

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is September 17, 2012. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on September 17, 2012. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; how-
ever, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in writing.

(1) COMPANY: ADICO ENTERPRISES INC. d/b/a Scarsdale Shell; DOCKET NUMBER: 2011-1793-PST-E; TCEQ ID NUMBER: RN102793114; LOCATION: 10999 Scarsdale Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: $5,129; STAFF ATTORNEY: Joel Cordero, Litigation Division MC 175, (512) 239-0672; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: City of Del Rio; DOCKET NUMBER: 2011-1894-PWS-E; TCEQ ID NUMBER: RN101264999; LOCATION: Bayview Drive, Del Rio, Val Verde County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(3)(A) and §290.46(n)(3), by failing to provide copies of well completion data; PENALTY: §317; STAFF ATTORNEY: Peipey Tang, Litigation Division, MC 175, (512) 239-0654; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(3) COMPANY: Colon Enterprises, Inc. d/b/a My-T-Quick; DOCKET NUMBER: 2011-0928-PST-E; TCEQ ID NUMBER: RN102358793; LOCATION: 102 East Belt Line Road, Cedar Hill, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.246(1) and (5), by failing to maintain Stage II records at the station; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; THSC, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery system training regarding the purpose and correct operation of the Stage II equipment; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change; 30 TAC §334.10(b), by failing to maintain all the required UST records and make them immediately available for inspection upon request by agency personnel; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C) and (4), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, and by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and (iii)(l), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.42(i), by failing to inspect all sumps, manways, over spill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of liquid and debris; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; and 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the UST did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity; PENALTY: $16,262; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: FALCON BROTHERS INC d/b/a Texas Country Store 3; DOCKET NUMBER: 2012-0663-PST-E; TCEQ ID NUMBER: RN101734952; LOCATION: 1805 Texas Avenue, Bridge City, Orange County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.248(1), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II equipment; PENALTY: $1,587; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastsex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: FOTY, L.L.C. d/b/a Pick N Pay 2; DOCKET NUMBER: 2011-0864-PST-E; TCEQ ID NUMBER: RN100599067; LOCATION: 1315 Bla lock Road, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $2,975; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Fred Jackson; DOCKET NUMBER: 2010-1897-PST-E; TCEQ ID NUMBER: RN101537017; LOCATION: 1155 East Ledbetter Drive, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and property with a car repair shop; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $2,625; STAFF ATTORNEY: Elizabeth Lierbkenknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: G. W. Haston Family Trust; DOCKET NUMBER: 2010-0262-PST-E; TCEQ ID NUMBER: RN101789105; LOCATION: 1295 Crockett Street, Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2) and §334.54(b)(2) and (d)(2), by failing to permanently remove from service no later than 60 days after the prescribed up-
grade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering or vandalism by unauthorized persons; and by failing to ensure that any residue from stored regulated substances which remained in the temporarily out-of-order service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3 percent by weight of the system at full capacity; PENALTY: $8,925;


(8) COMPANY: Jogesh Amin DBA Stop N Save; DOCKET NUMBER: 2011-1754-PST-E; TCEQ ID NUMBER: RN102445400;

LOCATION: 5201 Jacksboro Highway, Fort Worth, Tarrant County;

TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and 30 TAC §334.72, by failing to report a suspected release to the agency within 24 hours of discovery; PENALTY: $2,629;

STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: Mohammad A. Ghene d/b/a Super Food Mart 12; DOCKET NUMBER: 2011-1606-PST-E; TCEQ ID NUMBER: RN102430840;

LOCATION: 302 West Duval Street, Troup, Smith County;

TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.75(b), by failing to contain and immediately clean up a spill of a petroleum substance from a UST system and immediately notify the TCEQ of the failure to accomplish the cleanup within 24 hours; PENALTY: $6,500;

STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: Puri Enterprises Inc d/b/a HWY 105 GROCERY & DELI and UMA Enterprises Inc. d/b/a HWY 105 GROCERY & DELI; DOCKET NUMBER: 2011-2261-PST-E; TCEQ ID NUMBER: RN101431385;

LOCATION: 17255 Highway 105, Washington, Washington County;

TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the UST system; PENALTY: $2,629;

STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: SPEEDY K MARKET INC.; DOCKET NUMBER: 2012-0274-PST-E; TCEQ ID NUMBER: RN102431939;

LOCATION: 600 East Sandy Lake Road, Coppell, Dallas County;

TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,000;

STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: UNITED FORTUNE ENTERPRISE, INC. d/b/a Paris Church's Chicken Shell; DOCKET NUMBER: 2011-1362-PST-E; TCEQ ID NUMBER: RN103018008;

LOCATION: 2335 North Main Street, Paris, Lamar County;

TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; PENALTY: $2,629;

STAFF ATTORNEY: Joel Cordero, Litigation Division, MC 175, (512) 239-0672; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is September 17, 2012. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequately, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on September 17, 2012. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in writing.
(1) COMPANY: Michael J. Paddack; DOCKET NUMBER: 2012-0237-LII-E; TCEQ ID NUMBER: RN105944334; LOCATION: 2503 Farleigh Lane, Cedar Park, Travis County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.35(d)(2), by failing to obtain a city permit and inspections required to install an irrigation system; 30 TAC §344.35(d)(12), by failing to place a permanent sticker on the controller and provide a copy of the design plan; 30 TAC §344.72(a), by failing to honor the three year warranty provided to the customer for the irrigation system installed at the site; 30 TAC §344.52(a), by failing to test the backflow prevention device upon installation of the irrigation system at the site; and 30 TAC §344.42(a) and §344.71(b), by failing to include the required TCEQ statement on all written estimates, proposals, bids and invoices and by failing to ensure that the irrigator's seal was clearly visible; PENALTY: $1,968; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

(2) COMPANY: SMAD ENTERPRISES INC. d/b/a Quick Mart; DOCKET NUMBER: 2012-0403-PST-E; TCEQ ID NUMBER: RN101835601; LOCATION: 6902 Bellaire Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: $6,368; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201204170
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 7, 2012

Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is September 17, 2012. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on September 17, 2012. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in writing.

(1) COMPANY: BENTON RAINIEY, INC.; DOCKET NUMBER: 2012-0062-PST-E; TCEQ ID NUMBER: RN102832433; LOCATION: 1425 South Church Street, Paris, Lamar County; TYPE OF FACILITY: UST system and a wholesale fuel delivery service; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i) and (III), by failing to equip each separate pressurized line with an automatic leak detector, and by failing to test the line leak detectors at least once per year for performance and operational reliability; PENALTY: $2,629; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: CHENG SUNSHINE, INC. d/b/a Sunshine Beer and Wine; DOCKET NUMBER: 2012-0073-PST-E; TCEQ ID NUMBER: RN101856342; LOCATION: 4647 State Highway 19B, Malakoff, Henderson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the UST releases at a frequency of at least once per month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the pressurized piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,633; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Our G & G, Inc. d/b/a DJs Country Store; DOCKET NUMBER: 2012-0079-PST-E; TCEQ ID NUMBER: RN102039450; LOCATION: 7317 Highway 61, Hankamer, Chambers County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.8(c)(4)(C) and (5)(B)(ii), by failing to renew the UST delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days after change in ownership of the station; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated
with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight, and free of liquid and debris; 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; TWC, §26.3475(a) and 30 TAC §334.8(c)(5)(A)(ii), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once on each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(iii)(i), by failing to conduct inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; Texas Health and Safety Code (THSC), §302.085(b) and 30 TAC §115.244(1) and (3), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.246(1), (3), (4), and (5), by failing to maintain Stage II records at the station; and THSC, §382.085(b) and 30 TAC §115.242(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump; PENALTY: $19,003; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: QUICK SHOP, INC. d/b/a King Tobacco; DOCKET NUMBER: 2011-2290-PST-E; TCEQ ID NUMBER: RN102356532; LOCATION: 8095 College Street, Beaumont, Jefferson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every 30 days (not to exceed 35 days between each monitoring); 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: $21,135; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: RETAIL INVESTORS OF TEXAS, LTD d/b/a Market Basket Express 47; DOCKET NUMBER: 2012-0106-PST-E; TCEQ ID NUMBER: RN10218637; LOCATION: 3915 Phelan Boulevard, Beaumont, Jefferson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to provide release detection for the USTs by failing to conduct reconciliation of detailed inventory control records at least once each month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(4), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back-pressure at least once every 36 months, or upon major system replacement or modification, whichever occurs first; PENALTY: $25,551; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: S & J OIL COMPANY INC. DBA Moss Lake Community Store; DOCKET NUMBER: 2011-2341-PST-E; TCEQ ID NUMBER: RN101279982; LOCATION: 8783 Farm-to-Market Road 1201, Gainesville, Cooke County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST registration certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; TWC, §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs at the facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $9,038; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: SHREDDHAR CORPORATION INC. d/b/a Slaton Truck Stop; DOCKET NUMBER: 2011-2244-PST-E; TCEQ ID NUMBER: RN103045977; LOCATION: 1402 Northwest Highway 84, Slaton, Lubbock County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; TWC, §26.3475(a) and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to provide release detection for the USTs by failing to conduct reconciliation of detailed inventory control records at least once each month in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.246(4), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; and THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back-pressure at least once every 36 months, or upon major system replacement or modification, whichever occurs first; PENALTY: $25,551; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.
available for inspection upon request by agency personnel; PENALTY: $17,313; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(8) COMPANY: SRK GROUPS INC dba Cool Stop 1; DOCKET NUMBER: 2011-2313-PST-E; TCEQ ID NUMBER: RN102382058; LOCATION: 5804 College Street, Beaumont, Jefferson County; TYPE OF FACILITY: UST and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(ii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.245(1) and (2), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i), by failing to equip each separate pressurized line with an automatic line leak detector; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect any releases known to be as small as the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.45(d)(1)(E)(vi), by failing to equip tank manways and dispenser sumps of a secondarily contained UST system with liquid sensing probes; THSC, §382.085(b) and 30 TAC §115.246(1), (3), and (4), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; THSC, §382.085(b) and 30 TAC §115.242(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve (also known as shear or impact valve) on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; and TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $17,908; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201204171
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 7, 2012

Notice of Water Quality Applications

The following notices were issued on July 27, 2012, through August 3, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010262001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at 2219 Lakeshore Drive, approximately 1.2 miles south-southwest of the intersection of State Highway 205 and Farm-to-Market Road 552 in Rockwall County, Texas 75032.

UA HOLDINGS 1994-5 LP has applied for a renewal of TPDES Permit No. WQ0012248001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The domestic wastewater treatment facility is located approximately 769 feet northeast of the intersection of Northbound SH 249 (Tomball Parkway) frontage road and Spring Cypress Plaza Drive in Harris County, Texas 77377.

RANCH UTILITIES LP has applied for a renewal of TPDES Permit No. WQ0012670001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 175,000 gallons per day. The facility is located at 8950 West Buffalo Circle, Willis, Texas, approximately 2,100 feet north of Farm-to-Market Road 1097 and 1.9 miles east-northeast of the City of Willis in Montgomery County, Texas 77378.

Northeast Texas Community College has applied for a major amendment to TPDES Permit No. WQ0013948001 to authorize an increase in the discharge of treated domestic wastewater to a daily average flow not to exceed 30,000 gallons per day. The facility is located at 2886 Farm Road 1735, approximately 100 yards northwest of the Campus entrance on Farm-to-Market Road 1735, approximately 3-1/2 miles southeast of the intersection of Farm-to-Market Road 1735 and State Highway 49 in the City of Mount Pleasant in Titus County, Texas 75455.

SH-DJL DEVELOPMENT LLC has applied for a new permit, Proposed TCEQ Permit No. WQ0015038001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day via non-public access subsurface drip irrigation system with a minimum area of 10.3 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 3,000 feet north of Highway 46 and 800 feet west of Highway 281 in Comal County, Texas 78070.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) has initiated a minor amendment of TPDES Permit No. WQ0012369001 issued to Fruitvale Independent School District, to change the Carbonaceous Biochemical Oxygen Demand (5-day) effluent characteristic, which was included in error, to Biochemical Oxygen Demand (5-day). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,400 gallons per day. The facility is located approximately 1,200 feet northeast of the intersection of U.S. Highway 80 and Farm-to-Market Road 1910 and approximately 2.1 miles east of the intersection of U.S. Highway 80 and State Highway 19 in Van Zandt County, Texas 75127.

NORTH TEXAS MUNICIPAL WATER DISTRICT has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010257001 to add a Final phase with ultraviolet light disinfection requirements. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,750,000 gallons per day. The facility is located approximately 2,310 feet southeast of the intersection of Spring Valley
Road and State Highway 75 in the City of Richardson in Dallas County, Texas 75081.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our website at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201204194
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 8, 2012

Proposition for Decision


This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201204196
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 8, 2012

Proposition for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 30, 2012, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Accel Quick Stop, Inc. d/b/a Libby Food Store; SOAH Docket No. 582-12-3504; TCEQ Docket No. 2011-0882-PST-E. The Commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Accel Quick Stop, Inc. d/b/a Libby Food Store on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201204197
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 8, 2012

Texas Health and Human Services Commission

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 28, 2012, to receive comments on the proposed amendments to §354.1252 and new §354.1253 under Texas Administrative Code, Title 1, Chapter 354, Subchapter A, Division 16 concerning Certified Nurse Midwife Services: Conditions for Participation; and Licensed Midwife: Conditions for Participation.

The hearing will run from 10:00 a.m. - 11:00 a.m. in the Health and Human Services Broker Center Lone Star Conference Room, 11209 Metric Boulevard, Building H, Austin, Texas.

HHSC proposes to outline the conditions under which a certified nurse midwife and licensed midwife may participate in the Medicaid program and provide certain pregnancy and labor and delivery services.

Written Comments. Written comments on the proposed amendments to the rules may be submitted to Michelle Harper, Manager of Acute Care Policy, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H310, Austin, Texas 78758; by fax to (512) 491-1953; or by e-mail to michelle.harper@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register. People requiring Americans with Disabilities Act accommodation or auxiliary aids or services should call Leigh A. Van Kirk at (512) 491-2813 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201204159
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 7, 2012

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 28, 2012, to receive comments on the proposed amendments to §354.1261 and §354.1262 under Texas Administrative Code, Title 1, Chapter 354, Subchapter A, Division 17, concerning Birthing Center Services; Benefits and Limitations, and Conditions for Participation.

The hearing will run from 9:00 a.m. - 10:00 a.m. in the Health and Human Services Broker Center Lone Star Conference Room, 11209 Metric Boulevard, Building H, Austin, Texas.

HHSC proposes to remove language stating that the Texas Medicaid program does not reimburse for services provided by a licensed midwife (LM) and amend language to allow HHSC to reimburse freestanding birthing centers for services that an LM has determined are required during the labor, delivery, and immediate postpartum periods. Because Texas Medicaid is required to reimburse freestanding birthing centers and birth attendants separately, the amendment adds language to prohibit services provided by an LM from being considered freestanding birthing center services. Also, the proposed amendment requires freestanding birthing centers in the Texas Medicaid program to be licensed to provide a level of service commensurate with the skills of the physician, certified nurse midwife, or LM who acts as birth attendant.

IN ADDITION August 17, 2012 37 TexReg 6361
Written Comments. Written comments on the proposed amendments to the rule may be submitted to Michelle Harper, Manager of Acute Care Policy, Medicaid/CHIP Division, Health and Human Services Commission, at P.O. Box 85200, Austin, Texas 78708-5200, Mail Code H310, Austin, Texas 78758; by fax to (512) 491-1953; or by e-mail to michelle.harper@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register. People requiring Americans with Disabilities Act accommodation or auxiliary aids or services should call Leigh A. Van Kirk at (512) 491-2813 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201204160

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 7, 2012

Department of State Health Services
Licensing Actions for Radioactive Materials
The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

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<td>Plano</td>
<td>04</td>
<td>07/20/12</td>
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<td>Smithville</td>
<td>Smithville Regional Hospital</td>
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<td>Southlake</td>
<td>Healthcare Associates of Southlake, L.L.P. dba Executive Medicine of Texas</td>
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<td>Sugar Land</td>
<td>Schlumberger Technology Corporation</td>
<td>L05677</td>
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<td>09</td>
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<td>Throughout TX</td>
<td>IRISNDT, Inc.</td>
<td>L04769</td>
<td>Deer Park</td>
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MODIFICATIONS TO GENERAL LICENSES FOR PACKAGING AND TRANSPORT ISSUED:

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<th>Location</th>
<th>Name</th>
<th>License #</th>
<th>SUBJECT RULE</th>
<th>Modification #</th>
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<td>Andrews County</td>
<td>Waste Control Specialists, L.L.C.</td>
<td>General</td>
<td>25 TAC §289.257</td>
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<td>07/17/12</td>
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<td>General</td>
<td>25 TAC §289.257</td>
<td>02</td>
<td>07/18/12</td>
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</table>

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business in the county or having a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.
Texas Department of Housing and Community Affairs

Notice of Public Hearing on Proposed Single Family Program Rules

The Texas Department of Housing and Community Affairs (the "Department") will hold a public hearing for the proposed Single Family Programs Rules, which were approved for comment and publication in the Texas Register by the Department's Governing Board on Thursday, July 26, 2012.

The draft rules for comment may be found in the August 10, 2012, issue of the Texas Register: http://www.sos.state.tx.us/texreg/index.shtml.

The public hearing will be held:

Wednesday, August 29, 2012
10:00 a.m. until no later than 12:00 p.m.
Room 1-100, Travis Building
1701 N. Congress Ave
Austin, Texas 78701

A representative from the Department will receive comments from stakeholders and the general public regarding proposed Single Family Program Rules. This includes the following proposed new rules: Single Family Programs Umbrella (Chapter 20), Single Family HOME Program (Chapter 23), Bootstrap Loan Program (Chapter 24), Colonia Self-Help Center (Chapter 25), Housing Trust Fund (Chapter 26), Texas First Time Homebuyer Program Rule (Chapter 27), Taxable Mortgage Program Rule (Chapter 28), Texas Single Family Neighborhood Stabilization Program Rule (Chapter 29); proposed amendment: Neighborhood Stabilization Program (Chapter 9); and proposed repeal: Texas Bootstrap Program (Chapter 2), Colonia Self-Help Center Program (Chapter 3), Texas First Time Homebuyer Program Rule (Chapter 7), Housing Trust Fund Rule (Chapter 51), and HOME Program Rule (Chapter 53, Subchapters C, D, E, F, and G).

Anyone may submit comments on the draft rules in written form or oral testimony at the public hearing. The public comment period is from August 10, 2012 to September 10, 2012. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. SEPTEMBER 10, 2012.

If you have questions regarding the public hearing process or the Single Family Programs reorganization effort, please visit http://www.tdhca.state.tx.us/single-family-reorganization.htm or contact Homero Cabello, HTF/OCI Division Director and Single Family Coordinator, at (512) 475-2118 or SCcoordinator@TDHCA.state.tx.us.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for this meeting should contact Jessica Perez, (512) 475-2261, at least three (3) days before the meeting so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Texas Department of Insurance

Notice of Public Hearing on Section 8 Program, 2013 Annual Plan

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P. L. 205-276) requires the Texas Department of Housing and Community Affairs (the "Department") to prepare a 2013 Annual Plan covering operations of the Section 8 Program. Pursuant to 24 CFR §903.17, the Department shall conduct a public hearing regarding that plan. The Department will hold a public hearing to receive written comments for the development of the Department's 2013 Annual Plan. The hearing will be held:

Friday, October 5, 2012
Texas Department of Housing and Community Affairs
221 East 11th Street, Room 116
Austin, Texas 78701
1:30 p.m. - 4:30 p.m.

The proposed 2013 Annual Plan and all supporting documentation are available to the public for viewing at the Department's main office, 221 East 11th Street, Attn.: Section 8 Program, Austin, Texas on weekdays during the hours of 8:00 a.m. until 4:30 p.m. The proposed plan will also be available for viewing on the Department's website at www.tdhca.state.tx.us/sec8.htm.

Questions or requests for additional information may be directed to Ms. Willie Faye Hurd, Section 8 Program Manager, Community Affairs Division, at whurd@tdhca.state.tx.us or by mail to P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. COMMENTS MUST BE RECEIVED BY 5:00 p.m. Wednesday, October 10, 2012.

Any interested persons unable to attend the hearing may submit their comments in writing to Willie Faye Hurd prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Ms. Hurd at least three (3) days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids or services for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two (2) days before the scheduled hearing so that appropriate arrangements can be made.

Texas Department of Insurance
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to the Insurance Code, Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Independence American Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, General Counsel Division, Legal Section - Nick Hoelscher, 333 Guadalupe, Tower I, Room 920, Austin, Texas.

If you wish to comment on the application of Independence American Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application and comments, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-201204092
Sara Waitt
General Counsel
Texas Department of Insurance

Texas Lottery Commission

Instant Game Number 1453 "Monthly Bonus"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1453 is "MONTHLY BONUS". The play style is "key number match".

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1453 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1453.
A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.
B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.
C. Play Symbol - The printed data under the latex on the front of the Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DOLLAR BILL SYMBOL, $5.00, $10.00, $20.00, $50.00, $100, $1,000, $20,000 and $10,000.
D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Filed: August 3, 2012

IN ADDITION August 17, 2012 37 TexReg 6367
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
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<td>ONE THOU</td>
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<td>$20,000</td>
<td>20 THOU</td>
</tr>
<tr>
<td>$10,000</td>
<td>MO/20YRS</td>
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</tbody>
</table>
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00 or $100.

H. High-Tier Prize - A prize of $1,000, $20,000 or $10,000/MO.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1453), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1453-0000001-001.

K. Pack - A Pack of "MONTHLY BONUS" Instant Game Tickets contains 75 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MONTHLY BONUS" Instant Game No. 1453 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "MONTHLY BONUS" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If the player matches any of the YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player wins the PRIZE for that number. If the player reveals a "dollar bill" play symbol, the player wins $10,000 per month for 20 years. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playably as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.
A. To be a valid Instant Game Ticket, all of the following requirements must be met:
1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.
A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.
B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
C. No duplicate LUCKY NUMBERS play symbols on a ticket.
D. No more than four matching non-winning prize symbols on a ticket.
E. A non-winning prize symbol will never be the same as a winning prize symbol.
F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and $5).
G. The "DOLLAR BILL" (auto win) and $10,000 annuity prize symbol will only appear on intended winning tickets as dictated by the prize structure and will only appear with each other.
H. The $20,000 prize symbol will appear at least once on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "MONTHLY BONUS" Instant Game prize of $5.00, $10.00, $20.00, $25.00, $50.00 or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to pay a $25.00, $50.00 or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MONTHLY BONUS" Instant Game prize of $1,000 or $20,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONTHLY BONUS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. To claim a "MONTHLY BONUS" top level prize of $10,000/MO for 20 years, the claimant must sign the winning Ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. When claiming a "MONTHLY BONUS" Instant Game prize of $10,000 per month for 20 years, the claimant must choose one of two (2) payment options for receiving his prize:

1. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $10,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each month on the first business day of the month for a combined total of $120,000 per year. Monthly payments will be made for a period of 20 years or a total of 240 monthly payments to reach the total maximum payment of "$2,400,000".

2. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $120,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 20 years or a total of 20 annual to reach the total maximum payment of $2,400,000.

3. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

F. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:
   a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
   b. in default on a loan made under Chapter 52, Education Code; or
   c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

G. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
B. if there is any question regarding the identity of the claimant;
C. if there is any question regarding the validity of the Ticket presented for payment; or
D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "MONTHLY BONUS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.
2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 Tickets in the Instant Game No. 1453. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1453 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>2,000,000</td>
<td>7.50</td>
</tr>
<tr>
<td>$10</td>
<td>1,100,000</td>
<td>13.64</td>
</tr>
<tr>
<td>$20</td>
<td>400,000</td>
<td>37.50</td>
</tr>
<tr>
<td>$25</td>
<td>100,000</td>
<td>150.00</td>
</tr>
<tr>
<td>$50</td>
<td>200,000</td>
<td>75.00</td>
</tr>
<tr>
<td>$100</td>
<td>4,500</td>
<td>3,333.33</td>
</tr>
<tr>
<td>$1,000</td>
<td>800</td>
<td>18,750.00</td>
</tr>
<tr>
<td>$20,000</td>
<td>20</td>
<td>750,000.00</td>
</tr>
<tr>
<td>$10,000/MO</td>
<td>4</td>
<td>3,750,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1453 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1453, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204177

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In addition August 17, 2012 37 TexReg 6371

Kimberly L. Kipling
General Counsel
Texas Lottery Commission
Filed: August 7, 2012

Instant Game Number 1461 "Diamond Mine"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1461 is "DIAMOND MINE". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1461 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1461.

A. Display Printing - That area of the instant game Ticket outside of the area where the Overprint and Play Symbols appear.
B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, MONEY BAG SYMBOL, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
</tr>
<tr>
<td>3</td>
<td>THR</td>
</tr>
<tr>
<td>4</td>
<td>FOR</td>
</tr>
<tr>
<td>5</td>
<td>FIV</td>
</tr>
<tr>
<td>6</td>
<td>SIX</td>
</tr>
<tr>
<td>7</td>
<td>SVN</td>
</tr>
<tr>
<td>8</td>
<td>EGT</td>
</tr>
<tr>
<td>9</td>
<td>NIN</td>
</tr>
<tr>
<td>10</td>
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</tr>
<tr>
<td>11</td>
<td>ELV</td>
</tr>
<tr>
<td>12</td>
<td>TLV</td>
</tr>
<tr>
<td>13</td>
<td>TRN</td>
</tr>
<tr>
<td>14</td>
<td>FTN</td>
</tr>
<tr>
<td>15</td>
<td>FFN</td>
</tr>
<tr>
<td>16</td>
<td>SXN</td>
</tr>
<tr>
<td>17</td>
<td>SVT</td>
</tr>
<tr>
<td>18</td>
<td>ETN</td>
</tr>
<tr>
<td>19</td>
<td>NTN</td>
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<tr>
<td>20</td>
<td>TWY</td>
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<td>21</td>
<td>TWON</td>
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<td>22</td>
<td>TWTO</td>
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<td>23</td>
<td>TWTH</td>
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<tr>
<td>24</td>
<td>TWFR</td>
</tr>
<tr>
<td>25</td>
<td>TWFV</td>
</tr>
<tr>
<td>26</td>
<td>TWSX</td>
</tr>
<tr>
<td>27</td>
<td>TWSV</td>
</tr>
<tr>
<td>28</td>
<td>TWET</td>
</tr>
<tr>
<td>29</td>
<td>TWINI</td>
</tr>
<tr>
<td>30</td>
<td>TRTY</td>
</tr>
<tr>
<td>31</td>
<td>TRON</td>
</tr>
<tr>
<td>32</td>
<td>TRTO</td>
</tr>
<tr>
<td>33</td>
<td>TRTH</td>
</tr>
<tr>
<td>34</td>
<td>TRFR</td>
</tr>
<tr>
<td>35</td>
<td>TREV</td>
</tr>
<tr>
<td>36</td>
<td>TRSX</td>
</tr>
<tr>
<td>37</td>
<td>TRSV</td>
</tr>
<tr>
<td>38</td>
<td>TRET</td>
</tr>
<tr>
<td>39</td>
<td>TRNI</td>
</tr>
<tr>
<td>40</td>
<td>TRTY</td>
</tr>
<tr>
<td>MONEY BAG SYMBOL</td>
<td>BAG</td>
</tr>
<tr>
<td>$5.00</td>
<td>FIVE$</td>
</tr>
<tr>
<td>$10.00</td>
<td>TEN$</td>
</tr>
<tr>
<td>$15.00</td>
<td>FIFTN</td>
</tr>
<tr>
<td>$20.00</td>
<td>TWENTY</td>
</tr>
<tr>
<td>$25.00</td>
<td>TWY FIV</td>
</tr>
</tbody>
</table>
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1461), a seven (7) digit pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1461-000001-001.

K. Pack - A pack of "DIAMOND MINE" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DIAMOND MINE" Instant Game No. 1461 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant Ticket. A prize winner in the "DIAMOND MINE" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the prize for that number. If a player reveals a "Money Bag" play symbol, the player wins the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
11. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
12. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparently winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

<table>
<thead>
<tr>
<th>$40.00</th>
<th>FORTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>$50.00</td>
<td>FIFTY</td>
</tr>
<tr>
<td>$100</td>
<td>ONE HUND</td>
</tr>
<tr>
<td>$500</td>
<td>FIV HUND</td>
</tr>
<tr>
<td>$1,000</td>
<td>ONE THOU</td>
</tr>
<tr>
<td>$50,000</td>
<td>50 THOU</td>
</tr>
</tbody>
</table>
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical play symbol patterns. Two (2) tickets have identical play symbol patterns if they have the same play symbols in the same positions.

C. Each ticket will have five (5) different "WINNING NUMBERS" play symbols.

D. Non-winning YOUR NUMBERS play symbols will all be different.

E. Non-winning prize symbols will never appear more than three (3) times.

F. The "MONEY BAG" play symbol (auto win) will never appear in the "WINNING NUMBERS" play symbol positions.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. The top prize symbol ($50,000) will appear on every ticket unless otherwise restricted.

I. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND MINE" Instant Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DIAMOND MINE" Instant Game prize of $1,000, or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DIAMOND MINE" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
   a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
   b. in default on a loan made under Chapter 52, Education Code; or
   c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "DIAMOND MINE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "DIAMOND MINE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in
these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.
A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1461. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1461 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>800,000</td>
<td>7.50</td>
</tr>
<tr>
<td>$10</td>
<td>800,000</td>
<td>7.50</td>
</tr>
<tr>
<td>$20</td>
<td>120,000</td>
<td>50.00</td>
</tr>
<tr>
<td>$25</td>
<td>80,000</td>
<td>75.00</td>
</tr>
<tr>
<td>$50</td>
<td>40,000</td>
<td>150.00</td>
</tr>
<tr>
<td>$100</td>
<td>13,500</td>
<td>444.44</td>
</tr>
<tr>
<td>$500</td>
<td>400</td>
<td>15,000.00</td>
</tr>
<tr>
<td>$1,000</td>
<td>150</td>
<td>40,000.00</td>
</tr>
<tr>
<td>$50,000</td>
<td>6</td>
<td>1,000,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered.

The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.24. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1461 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1461, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204178
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 7, 2012

Instant Game Number 1471 "Great 8's"

1.0 Name and Style of Game.
A. The name of Instant Game No. 1471 is "Great 8's". The play style is "key number match".

1.1 Price of Instant Ticket.
A. Tickets for Instant Game No. 1471 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1471.
A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.
B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.
C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27,
29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 40, 8 SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $5,000 and $80,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
</tr>
<tr>
<td>3</td>
<td>THR</td>
</tr>
<tr>
<td>4</td>
<td>FOR</td>
</tr>
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<td>5</td>
<td>FIV</td>
</tr>
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<td>SIX</td>
</tr>
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<td>NIN</td>
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<td>12</td>
<td>TLV</td>
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<td>13</td>
<td>TRN</td>
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<tr>
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<td>ONE THOU</td>
</tr>
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<td>$5,000</td>
<td>FIV THOU</td>
</tr>
<tr>
<td>$80,000</td>
<td>80 THOU</td>
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</table>
E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

H. High-Tier Prize - A prize of $1,000, $5,000 or $80,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1471), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1471-0000001-001.

K. Pack - A Pack of "GREAT 8'S" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GREAT 8'S" Instant Game No. 1471 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "GREAT 8'S" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE for that number. If a player reveals an "8" play symbol, the player wins DOUBLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate WINNING NUMBERS play symbols on a ticket.
C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No more than four identical non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and $5).

G. The "8" (doubler) play symbol will only appear on intended winning tickets as dictated by the prize structure.

H. The top prize symbol will appear at least once on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "GREAT 8'S" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $200 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GREAT 8'S" Instant Game prize of $1,000, $5,000 or $80,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GREAT 8'S" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
   a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
   b. in default on a loan made under Chapter 52, Education Code; or
   c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "GREAT 8'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GREAT 8'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.
4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 Tickets in the Instant Game No. 1471. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1471 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>480,000</td>
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<tr>
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<tr>
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<td>16</td>
<td>375,000.00</td>
</tr>
<tr>
<td>$80,000</td>
<td>6</td>
<td>1,000,000.00</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.20. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1471 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1471, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204179
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 7, 2012

Instant Game Number 1473 "Platinum 10X"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1473 is "PLATINUM 10X". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1473 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1473.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, PLATINUM BAR SYMBOL, 10X SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $10,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
</tr>
<tr>
<td>3</td>
<td>THR</td>
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</table>

<table>
<thead>
<tr>
<th>PLATINUM BAR SYMBOL</th>
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<tr>
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<tr>
<td>$5.00</td>
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</tr>
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<td>$10.00</td>
<td>TEN$</td>
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<tr>
<td>$15.00</td>
<td>FIFTN</td>
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<tr>
<td>$20.00</td>
<td>TWENTY</td>
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<tr>
<td>$40.00</td>
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<td>$50.00</td>
<td>FIFTY</td>
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<tr>
<td>$100</td>
<td>ONE HUND</td>
</tr>
<tr>
<td>$500</td>
<td>FIV HUND</td>
</tr>
<tr>
<td>$1,000</td>
<td>ONE THOU</td>
</tr>
<tr>
<td>$100,000</td>
<td>HUN THOU</td>
</tr>
</tbody>
</table>

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1473), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1473-0000001-001.

K. Pack - A Pack of "PLATINUM 10X" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "PLATINUM 10X" Instant Game No. 1473 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "PLATINUM 10X" Instant Game is determined once the latex on the Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins prize for that number. If a player reveals a "Platinum Bar" play symbol, the player wins PRIZE for that symbol. If a player reveals a "10X" play symbol, the player wins 10 times the prize amount for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;
8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Ticket must not be counterfeit in whole or in part;
10. The Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;
14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;
15. The Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

**IN ADDITION August 17, 2012 37 TexReg 6383**
B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery is to be the replacement of the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a ticket in accordance with the approved prize structure.

B. Adjacent non-winning tickets within a pack will not have identical symbol patterns. Two (2) tickets have identical symbol patterns if they have the same symbols in the same positions.

C. Each ticket will have five (5) different "WINNING NUMBERS" play symbols.

D. Non-winning YOUR NUMBERS play symbols will all be different.

E. Non-winning prize symbols will never appear more than three (3) times.

F. The "PLATINUM BAR" or "10X" play symbols will never appear in the "WINNING NUMBERS" play symbol spots.

G. The "10X" play symbol will only appear as dictated by the prize structure.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. The top prize symbol ($100,000) will appear on every ticket unless otherwise restricted.

J. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" play symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "PLATINUM 10X" Instant Game prize of $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PLATINUM 10X" Instant Game prize of $1,000, or $100,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PLATINUM 10X" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:
   a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
   b. in default on a loan made under Chapter 52, Education Code; or
   c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "PLATINUM 10X" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "PLATINUM 10X" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in
these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,080,000 Tickets in the Instant Game No. 1473. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1473 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>755,200</td>
<td>9.38</td>
</tr>
<tr>
<td>$10</td>
<td>991,200</td>
<td>7.14</td>
</tr>
<tr>
<td>$20</td>
<td>188,800</td>
<td>37.50</td>
</tr>
<tr>
<td>$50</td>
<td>94,459</td>
<td>74.95</td>
</tr>
<tr>
<td>$100</td>
<td>8,201</td>
<td>863.31</td>
</tr>
<tr>
<td>$500</td>
<td>531</td>
<td>13,333.33</td>
</tr>
<tr>
<td>$1,000</td>
<td>100</td>
<td>70,800.00</td>
</tr>
<tr>
<td>$100,000</td>
<td></td>
<td>1,011,428.57</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.47. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1473 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant Ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1473, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201204180
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: August 7, 2012

Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Applications for Importation of Waste

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received two applications for and two proposed agreements for import for disposal of low-level radioactive waste from:

(1) RAM Services, Inc. - Broker (TLLRWDCC #1-0013-00)
510 County Highway V
Two Rivers, WI 54241

(2) RAM Services, Inc. - Generator (TLLRWDCC #1-0014-00)
510 County Highway V
Two Rivers, WI 54241

The applications are being placed on the Compact Commission web site, www.tllrwdcc.org, where they will be available for inspection and copying.
Comments on the application are due to be received within twenty-five (25) days or by August 28, 2012. Comments should be mailed to:
Texas Low-Level Radioactive Waste Disposal Compact Commission
3616 Far West Blvd., Suite 117 #294
Austin, Texas 78731
Comments may also be submitted via email to: administration@tllr-wdcc.org.
TRD-201204089
Leigh Ing
Executive Director
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: August 3, 2012

Texas Department of Motor Vehicles
Correction of Error
The Texas Department of Motor Vehicles adopted amendments, repeals and new sections in 43 TAC Chapter 217, concerning Vehicle Titles and Registration, in the August 3, 2012, issue of the Texas Register (37 TexReg 5816). Amended §217.30 was adopted with changes and republished. On page 5818, the text of §217.30(b)(3)(A) is incorrect. The phrase "shall be registered" should be "may be registered" and the phrase "Such vehicles may be" should be "Such vehicles must be". The corrected subparagraph reads as follows:

"(A) Specifications. A truck or truck tractor with a gross weight in excess of 10,000 pounds used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, may be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination, but not less than 18,000 pounds. Only one combination license plate is required and must be displayed on the front of the truck or truck tractor. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles are not required to be registered in combination:"

TRD-201204206

North Central Texas Council of Governments
Request for Proposals for a Public Transportation Needs Assessment for Tarrant County, Texas
This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Government Code, Chapter 2254.
NCTCOG is seeking a qualified consultant to conduct a county-wide public transportation needs assessment. This effort is specifically focused on the transportation needs of transit-dependent persons (elderly adults, persons with disabilities and low income individuals) in Tarrant County, Texas. The intent of this study will be to identify existing conditions, detail existing and future needs for public transportation, and develop strategies and solutions that can be implemented in the next three to five years.
Due Date
Proposals must be received no later than 5:00 p.m., on Friday, September 14, 2012, to Jamie Patel, Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, August 17, 2012.
NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.
Contract Award Procedures
The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC’s recommendations and, if found acceptable, will issue a contract award.
Regulations
NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.
TRD-201204172
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: August 7, 2012

Public Utility Commission of Texas
Notice of Application for a Service Provider Certificate of Operating Authority
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 1, 2012, for a service provider certificate of operating authority, pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.
Docket Title and Number: Application of Integrated Path Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 40620.
Applicant intends to provide facilities-based and resale telecommunications services.
Applicant proposes to provide service in the service areas of all incumbent local exchange carriers in Texas.
Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by telephone at (512) 936-7120 or toll-free at (888) 782-8477 no later than August 24, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 40620.
TRD-201204164
Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 1, 2012, for a service provider certificate of operating authority, pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act.

Docket Title and Number: Application of Kingwood Networks LLC for a Service Provider Certificate of Operating Authority, Docket Number 40621.

Applicant intends to provide data-only, facilities-based and resale telecommunications services.

Applicant proposes to provide service throughout the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by telephone at (512) 936-7120 or toll-free at (888) 782-8477 no later than August 24, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 40621.

TRD-201204165
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2012

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 31, 2012, for an amendment to certified service area for a service area exception within Waller County, Texas.

Docket Style and Number: Application of San Bernard Electric Cooperative, Inc., to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Waller County. Docket Number 40618.

The Application: San Bernard Electric Cooperative, Inc. (SBEC) filed an application for a service area boundary exception to allow SBEC to provide service to a specific customer located within the certified service area of Entergy Texas, Inc. (ETI). ETI has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 24, 2012, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40618.

TRD-201204109
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2012

Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 1, 2012, to amend a certificate of convenience and necessity for a proposed transmission line in Gray and Wheeler Counties, Texas.


The Application: The application of Southwestern Public Service Company (SPS) for a proposed 115-kV transmission line located in Gray and Wheeler Counties is designated as the Bowers Substation to Howard Substation Transmission Line Project. The facilities include construction of a new single circuit 115-kV transmission line between the existing Bowers Substation located in Gray County and the existing Howard Substation located in Wheeler County. Depending on the route chosen, the majority of the proposed transmission line could be constructed and operated as a double circuit transmission line allowing SPS to utilize an existing corridor. The total estimated cost for the project ranges from approximately $19.8 million and $29.9 million depending on the route chosen.

The proposed project is presented with 13 alternate routes consisting of a combined 58 segments and is estimated to be approximately 35 to 44 miles in length depending on which route is selected. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is September 17, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 40550.

TRD-201204108
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 3, 2012

Notice of Application to Determine Whether Certain Markets With Populations Less Than 100,000 Should Remain Regulated

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition filed on August 3, 2012, seeking to determine whether certain markets of the company with populations of less than 100,000 in Texas should remain regulated.

Docket Style and Number: Petition of AT&T Texas to Determine Whether Certain Markets With Populations Less Than 100,000 Should Remain Regulated. Docket Number 40631.
The Application: Southwestern Bell Telephone Company d/b/a AT&T Texas (AT&T Texas) filed a petition seeking to determine whether certain markets of the company with populations of less than 100,000 in Texas should remain regulated. The commission has jurisdiction over the petition pursuant to §65.052 of the Public Utility Regulatory Act (PURA). AT&T Texas claims that 63 of its local exchange markets meet the criteria for deregulation set out in §65.052(b)(2). In making a determination, PURA §65.052(b)(2) provides that the commission may not determine that a market should remain regulated if the population in the area included in the market is less than 100,000 and, in addition to the incumbent local exchange company (ILEC), there are at least two competitors operating in all or part of the market that are unaffiliated with the ILEC and provide voice communications service without regard to the delivery technology.


Pursuant to PURA §65.052(a) the commission shall issue a final order no later than 90 days after the petition is filed. The 90th day in this case is November 1, 2012.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by telephone at (512) 936-7120 or toll-free at (888) 782-8477 as soon as possible as a deadline to intervene will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All comments should reference Docket Number 40631.

TRD-201204167
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2012

Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of Verizon Southwest's (Verizon or the Applicant) application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Application of Verizon Southwest to Discontinue Outward WATS and Inward 800 Service contained in its Texas General Exchange Tariff TXICL and Product Guide; Docket Number 40581.


Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by telephone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at (800) 735-2989. All inquiries should refer to Docket Number 40581.

TRD-201204193
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2012

Notice of Public Forum-Project Relating to Advanced Metering Issues

The Public Utility Commission of Texas (commission) will hold a Public Forum in Project No. 40190, Project Relating to Advanced Metering Issues. The Public Forum will be held on Tuesday, August 21, 2012, at 10:00 a.m. in the John H. Reagan Building at 105 W. 15th St., Austin, Texas 78701. The Public Forum will be open to the public. Individuals do not need to register or contact the staff to attend the Public Forum.

Questions concerning the Public Forum or requests to speak at the Public Forum should be sent to commission staff at meterforum@puc.texas.gov. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201204193
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2012

Public Notice of Workshop on Proposed ERCOT Budget for 2013

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding the proposed budget for 2013 for the Electric Reliability Council of Texas (ERCOT) on Thursday, September 20, 2012, at 10:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 38533, PUC Review of ERCOT Budget, has been established for this proceeding. Pursuant to P.U.C. Substantive Rule §25.363(d), relating to ERCOT Budget and Fees, ERCOT is required on an annual basis to submit for commission review its board-approved budget, budget strategies and staffing needs, with a justification for all expenses, capital outlays, additional debt, and staffing requirements. The commission may approve, modify or reject ERCOT's proposed budget and budget strategies. On August 2, 2012, ERCOT filed in Project No. 38533 its proposed budget for 2013. ERCOT's proposed budget does not contemplate any change in the ERCOT System Administrative Fee, which is currently set at $0.4171 per megawatt hour (MWh). Prior to the workshop, the commission requests interested persons to file comments on the following question:

Is ERCOT's proposed budget for 2013 reasonable?

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 no later than
Monday, September 17, 2012. All responses should reference Project Number 38533.

Questions concerning the workshop or this notice should be referred to Thomas S. Hunter, Special Counsel, (512) 936-7280. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201204192
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2012

Texas A&M University System Board of Regents
Announcement of Finalist for the Position of Director of Texas AgriLife Extension Service

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the position of Director of Texas AgriLife Extension Service (effective September 1, 2012 - Texas A&M AgriLife Extension Service). Upon the expiration of twenty-one (21) days, final action is to be taken by the Board of Regents of The Texas A&M University System.

Dr. Douglas Steele
TRD-201204111
Vickie Spiller
Executive Director
Texas A&M University System Board of Regents
Filed: August 3, 2012

Texas State University System
Notice of Intent - Outside Consultant or Executive Search Firm

The Texas State University System (TSUS) invites consultants experienced in advising public entities (particularly institutions of higher education) to assist the Chancellor and the Board in conducting their academic search for the next President of Lamar University. TSUS intends to select a firm with consulting expertise (“Consultant”) in performing the tasks necessary to engage the services of an exceptional chief executive officer, including but not necessarily limited to, the following: organization of the search process; meeting with key stakeholders; analysis of needs; posting of announcements; recruitment of a qualified pool of applicants; screening candidates and sharing its evaluation of the same as requested by the Chancellor; setting up interviews of suitable candidates; facilitating the appointment process; working with the Board’s advisory search committee and the Chancellor; and working with such persons that the advisory search committee or the Chancellor may direct. Any firm intending to respond to this notice should obtain Request for Proposals No. 758-12-00017 and follow the instructions for responding contained therein. A copy of the RFP may be downloaded from the Electronic State Business Daily website at: http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=101868.

The deadline for proposals is August 24, 2012, 5:00 p.m. (C.D.T). The announcement/award date is September 21, 2012. TSUS reserves the right to accept or reject any or all proposals submitted. TSUS is under no legal or other obligation to execute a contract or agreement on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TSUS to pay for any costs incurred prior to the award of a contract or agreement. As provided by Texas Government Code, §2254.028(c), the Chancellor of the system has concluded that consulting services are necessary for the reasons that follow. First, the President is a critical position because the President is charged with oversight of Lamar University. Second, everyone in the presidential or executive staff reports to the President. Third, it would be inappropriate for the incumbent President to assist in choosing his successor. Fourth, selecting a President is an infrequent occurrence. Therefore, securing the services of a knowledgeable, impartial, and uninvolved outside consultant to assist the Chancellor and the Board in the search is essential to finding the quality individual needed to run a major university in the system. Fifth, the system does not maintain staff with the expertise, staffing, and national network of contacts necessary for a successful search.

TRD-201204110
Peter E. Graves
Vice Chancellor for Contract Administration
Texas State University System
Filed: August 3, 2012
Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the Texas Register's Internet site: http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items not available here, contact the agency directly. Items not found here:
- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the Open Meetings Act Handbook, and Open Meetings Opinions. http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here: http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.